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WITH

AN INTRODUCTION

BY

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Madras

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INTRODUCTION.

In these volumes all the important texts recognised as authorities in the different schools of Hindu Law have been collected. Of these the majority are Nibandhas or special treatises or institutes written by Sanskrit scholars. They contain an exposition of the ancient texts on various subjects under appropriate headings. The rest are commentaries on ancient works, as for instance, the Mitakshara which is a Commentary on the Smriti of Yagnavalkya. These also partake of the nature of nibandhas because the commentators in commenting on the texts take care to weave them all into a regular treatise with wonderful skill by appropriate introductions and conclusions.

The following table shows at a glance the number of texts included in this work and the schools to which they belong :—

1. Benares School.	1. Mitakshara. 2. Viramitrodaya. 3. Dattaka Mimamsa. 4. Nirnaya Sindhu. 5. Madana Parijata.
2. Dravida School.	1. Mitakshara. 2. Parasara Madhaviya. 3 Sarasvati Vilasa. 4. Smriti Chandrika. 5. Dattaka Chandrika. 6. Vaidyanatha Dikshitiya.
3. Mithila School.	1. Mitakshara. 2. Vivadachintamani. 3. Vivada Ratnakara. 4. Dattaka Mimamsa.
4. Bengal School.	1. Dayabhaga. 2. Dayatatwa. 3. Dayakrama Sangraha. 4. Dattaka Chandrika.

5. Maharastra School
   1. Mitakshara.
   2. Vyavahara Mayukha.
   3. Nirnaya Sindhu.
   4. Dattaka Mimamsa.
   5. Samskara Kaustubha.

6. Guzerat School.
   1. Vyavahara Mayukha.
   2. Mitakshara.

Besides these, some special treatises on such subjects as adoption, marriage, etc., are referred to now and then for the elucidation of difficult points by Sanskrit pandits of different provinces. But their authority is limited, most of them not being known outside their provinces. To include them all would be almost an impossible task nor is it necessary to do so.

As all things Indian, the Hindu Jurisprudence has also suffered much from ignorance and prejudice. This was perhaps inevitable. All the works on Hindu Law are written in Sanskrit, a language with which even the majority of Indians are not familiar. Its knowledge was confined to professional pandits. Even with them, a knowledge of Smritis was not common. Although the reading of the Manu Smriti was enjoined as a part of daily religious routine, owing to causes which need not be specified here, the practice had long ceased to be observed. Even the few that paid attention to this branch of learning, were far from being jurists. In fact, even on questions of law, they were guided more by ceremonial works such as Dharmasindhu and Nirnayasindhu than by actual treatises on Law. This is strikingly illustrated by the position given to the full and half sisters in Bombay. In the Western school, they occupy in the line of inheritance, the same high position as is given to them in the order of persons who have to perform sraddha in the Dharmasindhu and Nirnayasindhu which are the works recognized in that school as authorities on ceremonial law.* By the time of Nilakantha, the author of the Mayukhas, their position had evidently become so fixed, because we find Nilakantha trying to furnish textual authority for the same by interpreting the word '*gotraja*' appearing in Yagnavalkya's text on collateral succession as

* *See* West and Buhler, pp. 11 & 23 cp. Sarvadhikari's Tagore Law lectures, pp. 106-13.

meaning *gotrajata* or actually born in the family.* *See* Mayukha, chapter IV., sec. 8, para. 19. In thus departing from the interpretation put on the same word in the Mitakshara to whose school he belongs, Nilakantha was no doubt using his erudition to meet an exigency created by usage which must have become general in the country by that time. That this is so, is put beyond doubt, by the fact that Nilakantha's interpretation of that word has not been accepted even in that school with regard to any other female similarly situated. All attempts to make use of Nilakantha's interpretation for giving the latter the same preference have been consistently and uniformly frustrated by the Courts. *See* Ganesh *v.* Waghu, 27 Bom. 310.† This furnishes an instance of the manner in which ecclesiastical law reacts on the positive law. Moreover, juristic knowledge was not felt as a necessity for the obvious reason that under the social system prevailing in the country, which provided for the settlement of all disputes in the forum of the caste or the guild, there was no necessity for any elaboration of the law. Colebrooke thus describes the Hindu system :—" There were two classes of courts—state and popular."

The State Courts are :—

(i) " The court of the sovereign, who is assisted by learned Brahmins as assessors ; it is ambulatory, being held where the king abides or sojourns."

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* Mandlik, p. 91. ll. 25-35.

† The point has been somewhat unsettled by the recent decision of the Bombay High Court in Bhagwan *v.* Warubai, X Bom. L. R. p. 389, which while settling that the position of sister in the line of heirs in the Mitakshara districts of that presidency is exactly the same as under the Mayukha, reopens the question as to how far the *reasoning* adopted by Nilakantha in bringing the sister in among the Gotrajas is to be extended to other cases. When the answers of the Sastris as regards the position of the sister are examined in the light of what is stated in the two Sindhus which was their *vade mecum* there cannot be any doubt that the position assigned to her by the abovementioned decision is correct. In fact, the previous decisions, the most important of which is the recent case of Mulji *v.* Cursandass, 24 Bom. 563, referred to in the said judgment, had worked up to very near assigning her the present position. It had already been held that her position was not lower than the one next to the grandmother. Therefore, there can be no doubt that in *Bombay* her position is next after the grandmother both in the Mayukha and Mitakshara districts.

But the abovementioned judgment without being content to rely on the legal usage of the Presidency, which as was pointed out by West, J., in Bhagirathi Bai *v.* Kanhojirao, 11 Bom. 285, the Courts were bound to recognize, goes on to compel the Mitakshara to yield its direct support to that usage by arguments based on other passages. If Vijnaneswara also had intended Gotraja to include a girl born in the family, though under the necessity to go out into another by marriage, then the previous decisions which refused to include other daughters of the family among Gotrajas evidently on the strength of the Mitakshara have to be reconsidered.

(ii) "The tribunal of the chief judge appointed by the sovereign and sitting with three or more assessors not exceeding seven. This is a stationary court, being held at an appointed place."

(iii) "Inferior judges appointed by the sovereign's authority for local jurisdictions; from their decision appeal lies to the court of the chief judge, and thence to the king in person."

Popular Courts:—

(i) "Assemblies of townsmen, or meetings of persons belonging to various tribes and following different professions but inhabiting the same place."

(ii) "Companies of traders or artizans; conventions of persons belonging to different tribes, but subsisting by the practice of the same profession."

(iii) "Meetings of kinsmen, or assemblages or relations connected by consanguinity. The technical terms in the Hindu Law books for these 3 gradations of assemblies are:—i. Puga, ii. Sreni, and iii. Kula.*

From the above description, it is clear that very few cases would reach the State Courts, because under the rigid caste system, public opinion would be strongly against questioning the decisions of the popular courts.

Therefore, the pandits were not called upon to decide questions of law except in rare cases. Thus their attention was naturally confined to the portions of the Smritis which treat of the ceremonial law. No doubt with the establishment of the Mahratta and Sikh powers some attention was paid to positive law, but it was not much. It was only after the establishment of British power in Bengal that regular Courts for the administration of justice were established and the necessity for a regular study of Hindu Law arose. To the English Courts, pandits were attached who were supposed to be experts in Hindu Law. Warren

* Colebrooke, Miscellaneous Essays, p. 401-2.

Hastings had a 'Code' drawn up for use in Bengal Courts and it was translated by Halhed. This work is known to the Profession as Halhed's Gentoo Law. In the meanwhile, European scholars turned their attention to Sanskrit. They rendered into English, portions of important Hindu Law treatises which were collected by Stokes and published under the title of Hindu Law Books. This compilation has been the main source from which text-writers and judges have derived their knowledge of Hindu Law. Except in the case of one or two texts, these translations were of the chapter on *Dayabhaga*('partition of inheritance') which is only one out of eighteen titles under which the various topics of Hindu Municipal Law are discussed by Hindu jurists. The international law is not reckoned as a topic of Vyavahāra but is dealt with under the heading of Rajadharma or the duties of the king and the revenue and administrative laws are treated in the Arthasāstra in works known as Nitissātras, as for instance, Chānakyaniti,* the Sukraniti, and the Kāmandākiniti. Moreover, of the works which are recognised as authorities in different schools, some only were included in this compilation. Others had to wait for being clothed in English till Oriental studies were taken up by Indian scholars. Viramitrodaya, Vivādaratnākara and others have since been translated by Indian scholars. But even these translations are fragmentary, being confined to the chapter on inheritance. Even the Mitāksharā which gives the law for all provinces except Bengal, has not yet appeared in English as a whole.† Therefore, the courts have had to make the best of the available materials. Having regard to their meagreness, it speaks volumes for the legal acumen of the British Judges that the mistakes committed by them are so few. But mistakes there are. For instance, such an eminent scholar as Colebrooke, forgetting that the word 'Sapinda' on which the whole law of inheritance depends had been elaborately defined by the author of the Mitāksharā in the first book on 'Achāra', gave it in Mitāksharā the sense attached to it in the Dāyabhāga which is diametrically opposed to the view of the Mitāksharā. It was not till Sir Raymond

* This work has recently been translated by my friend Mr. Sāma Sāstry, of the Oriental Library of Mysore.

† Such a translation by this writer is in Press, in the Brahmavadin Press, Madras, and will shortlybe out.

West unearthed and used the definition in *Lallubhai* v. *Mankuvarbai*, 2 Bom. 388* that the Privy Council came to know of Colebrooke's mistake. Till then, decisions under the Dãyabhãga were freely cited at the Bar as authorities in Mitãkshara cases and *vice versa*. This blunder has been particularly disastrous to the rights of women in Mitãkshara provinces other than Bombay. For instance, the doctrine of the Dãyabhãga that women not expressly mentioned were excluded from inheritance was for some time adopted in Madras, and Mr. J. D. Mayne whose Hindu Law ideas were formed during the earlier days, has tenaciously clung to it, although the Madras High Court, by skilful manœuvring extricated itself from the blunder.† Bombay was saved from this experience owing to the legal genius of Sir Michael Westropp and the deep learning of Sir Raymond West. If ignorance has thus been at work, prejudice its twin-sister has been no less active.

To begin with, Hindu Law is an eastern system of jurisprudence. Many of the ideas which are considered barbarous by western scholars are cherished by the Easterns as most precious. "All law is a compromise between the past and the present, between tradition and convenience!" The past and the traditions of the East have been so far different from those of the West that it is no wonder that scholars nurtured in the legal atmosphere of the West should form a poor opinion of the Hindu system. Moreover, when the Indian Law and Civilization began to be studied by western scholars, the European thought was itself in a transitional stage. Under the influence of the Benthamite school the British mind had been captured by individualism and utilitarianism, and the study of the Indian system as of every other, was approached with prejudices and predilictions inseparable from that school. The days of socialism were not yet. Therefore it is but natural that a system to which individualism was altogether foreign should have appeared crude and uncivilized to the western scholars. A striking instance of this is to be found in the case of a scholar of no less eminence than Sir Henry Maine. In his 'Ancient

* It is also found in West and Buhler's Hindu Law.

† *See* Mayne's Hindu Law, paras. 494 *et seq* and Kuttiammal *v.* Radkrishna, 8 M. H. C. 88 and Lakshmanammal *v.* Tiruvengada Mudali, 5 M. H. C. 241.

Law' which was written before he came out to India, the following passage is found. "The fate of Hindu Law is, in fact, the measure of the value of the Roman Code. Ethnology shows that the Romans and the Hindus sprang from the same original stock, and there is indeed a striking resemblance between what appear to have been their original customs. Even now, Hindoo jurisprudence has a substratum of forethought and sound judgment, but irrational imitation has ingrafted in it an immense apparatus of cruel absurdities. From these corruptions, the Romans were protected by their Code. It was compiled while usage was still wholesome, and a hundred years afterwards it might have been too late. The Hindu Law has been to a great extent embodied in writing, but, ancient as in one sense are the compendia which still exist in Sanskrit, they contain ample evidence that they were drawn up after the mischief had been done. We are not of course entitled to say that if the Twelve Tables had not been published the Romans would have been condemned to a civilization as feeble and perverted as that of the Hindus, but this much at least is certain, that *with* their Code they were exempt from the very chance of so unhappy a destiny." *

It goes without saying that a civilization which held its own in the struggle for existence for over a period of at least two thousand years while nations after nations which adopted the aggressive civilization of the West perished and which, even at the end of that period, has life and stability enough to respond to and react on the new social forces created by the advent of the aggressive West in Asia, cannot possibly be so 'feeble and perverted' as is here described. The real fact is that in India, the Benthamite doctrine of the greatest happiness of the greatest number was recognised ages ago. That was taken as the test of the utility or otherwise of all human institutions and laws. But in India, it was recognised equally early that pleasures of worldly enjoyment, *though not to be despised or neglected*, are, in the nature of things, so mixed up with troubles and miseries and are so ephemeral, that their pursuit is no happiness and that real happiness which endures is contentment (*sànti*) and that this *sànti* could only be secured

* Maine's Ancient Law, Ch. I, p. 20.

by minimising one's material wants and spending one's time and energy in securing the higher pleasures of the intellect and the spirit. This was the ideal which was consciously adopted. This and the religious beliefs and the social exigencies due to historical causes explain the Hindu civilization which is neither crude nor feeble, nor undeveloped. What Rome was to Europe and the West, India is or at least was to Asia and the East. Most of the problems that are now being solved by Europe had also to be solved by the Hindus and the social and religious institutions now found in the country are the witness of their method of solution. This solution entirely differs from that of the West in essential particulars, but yet, this is a solution which did ensure to a fifth of the human race, material prosperity and spiritual eminence and national stability and strength for thousands of years. The overconfidence and impetuosity of the European civilization, which is yet in its youth, make its votaries forget that the solutions they are adopting for the social evils have not yet passed beyond the experimental stage. This is shewn by the undeniable fact, that each solution brings into light and even into existence fresh difficulties, oftentimes more troublesome than those which were sought to be removed. But yet, it is hastily concluded that whatever is found in Europe is the best and that therefore, anything found unlike it elsewhere must be crude and barbarous. Even the most cultured are not quite free from this bias and it vitiates the speculations of most of the European and English-nurtured Indian scholars on the sociology and jurisprudence of the Hindus. This bias is not cured by the unfamiliarity of the social and legal phenomena found in this country. If Romans built up their legal system on the conception of right, Hindus founded their own on that of duty. If Romans built up their social fabric on the basis of worldly prosperity, the Hindus built it on that of spiritual purity. In Europe, the higher a man in the social scale the fewer are the restraints on his liberty of action. Among the Hindus the higher is a man's caste, the greater and more onerous are his duties. The Mahar or the Pariah has no restraint at all. He has the greatest liberty of action. He can eat what he likes, drink what he gets, do what he wants, provided he does not overstep the limits of general morality and positive law. He should not

assault people, commit robbery, or other heinous crimes. Short of that he can enjoy to his heart's content. He has absolute liberty of action.

The Sudra, who is higher in rank, has not the same freedom. He is forbidden to eat unclean food, and there are other petty restrictions. But they are very few. The modern Sudra in his desire to imitate the Brahmin has manacled himself with the chains of the latter, but they are not imposed on him by Hindu Law, or the Hindu Society.

The liberty of the Vaisya, the next higher in rank, is more limited, but the restrictions are few when compared with those of the Brahmin. Then comes the Kshatriya, who is hemmed in with restrictions, which, however, are not so serious in respect of worldly enjoyment as in the case of the Brahmin.

Lastly, there is the Brahmin who stands at the top, *because* he has the least liberty of action. His whole life is a round of duties which, if properly observed, leave him no time for any serious worldly pursuit. The importance of the functions assigned to each is thus in proportion to the restraints imposed.

Hindu Law being the expression of the legal consciousness of such a society, it must necessarily possess peculiarities repugnant to a civilization proud of its dogma of *laissez faire*.

As already pointed out in India, as long as her village assemblies and trade guilds were alive, there was no necessity for an elaborate judicial state machinery. Although under Hindu Law four appeals are allowed, very few cases went beyond the popular courts provided by the village community or the guild.

Oblivious of these peculiarities, some lawyers went so far as to say that there was no Hindu Law, and some others that there were no schools of Hindu Law. But now it is generally recognised that Hindu Law is a reality, but as to schools there is some difference of opinion as to their nature and their number. Mr. Mayne says that there are schools only where there are differences of opinion among the Sanskrit writers. This is evident enough; but the difficulty is in its application. What amount of difference would entitle a school for recognition?

This, it is not easy to say. We know as a matter of fact that all the schools spoken of by Mr. Morley, the Bengal, the Mithila, the Benares, the Maharashtra, and the Dravida (the last being subdivided into Dravida, Karnataka and Andhra) do differ in some detail. For instance, in the law of adoption there is a radical difference between Bombay and Madras. In Bombay, a widow can adopt without waiting for the permission of any sapindas, whereas in Madras such permission is needed. In Bombay, a married man can be adopted, whereas in Madras he cannot be. In Mithila, Kritrima adoption is recognised, whereas in other schools it is not. In the law of Stridhan similar and even more serious differences are found. Are these differences not enough to justify the classification of Mr. Morley? Mr. Mayne is of opinion that the Dāyabhāga and Mitākharā are the only two schools in the real sense. But as has been pointed out, there are differences of importance between what are known as schools of Mitākharā. Therefore, this test is not conclusive. For determining the existence of these schools, recourse must be had to history. Their historical origin is indicated by the fact that their local limits are conterminous with the linguistic boundaries to a great extent. An examination of the history of the origin of schools in general shows that this coincidence is not accidental. The mode in which divergences between the different provinces arose has been noticed by the judicial Committee of the Privy Council. They say: "Works universally or very generally received became the subject of subsequent commentaries. The commentator puts his own gloss on the ancient texts, and his authority having been accepted in one and rejected in another part of India, schools with conflicting doctrines arose."—*Collector of Madura* v. *Muthuramalinga Sethupathi*, 12 M. I. A. 435. This explanation is right so far as it goes. But it does not say why the particular gloss came to be put by the commentator in question.

Moreover, it would be unreasonable to suppose that any theoretical treatise would, as such, be accepted in a particular province and give rise to a new school. For, in such an eminently practical department as law, which affects the every-day life of man at every step, it is impossible that a community proverbially tenacious of its customs

as the Indian would accept the theoretical deductions of any writer, however able or clever. On the other hand, it is more in consonance with reason to suppose that the success or failure of a given treatise, commentary or digest, would entirely depend on the success achieved by the author in bringing his theoretical conclusions into harmony with customary law. This must be so in any country and under any system of jurisprudence. But in India especially, it cannot be otherwise; because Hindu Law has placed custom above Law. In the words of the Privy Council 'under the Hindu system of Law, clear proof of usage will outweigh the written text of the Law'. If this principle be borne in mind, it will be evident that no Hindu writer could hope to impose his treatise on his community or province without taking good care to bring it into harmony with their legal consciousness as expressed in their customs. For otherwise, exceptions which every litigant has a right to assert as custom would eat up the law laid down by him.

'This *a priori* conclusion is amply borne out by what we know of the writers of the Commentaries and Digests recognised as leading authorities in the different schools. On examination, they will be found to have been composed with the immediate object of being used by the judiciary of the province or Kingdom to which the author belonged. This is true of the leading authorities only—not of those which are subsidiary. They were all written either by ruling chiefs or their ministers themselves or by others in their name or at their instance'

To take them one by one:

Mitakshara.—This was written by the ascetic Vijnaneswara for Vikramanka, the Chalukya ruler of Kalyana at the end of the eleventh century.

Sarasvati Vilasa.—This work, which is of authority in Orissa, was written by Pratapa Rudra Deva, the King of Orissa, or at his instance between the years 1503 and 1524 A.D.

Vivada Ratnakara.—This is the leading authority of the Mithila school. It was composed by Chandeswara Thakura, the minister of Harasimha, about theyear 1314 A.D.

Viramitrodaya.—This is the leading authority next to the Mitakshara in the Benares school. The author expressly says that he wrote it at the instance of the Bundella King, Virasimha.

Smriti Chandrika.—The leading authority in Madras. Unfortunately so little is known about the origin of this work that it is impossible to say anything regarding its author or composition.

Parasaramadhaviya.—Another leading authority in the same school composed by Madhava, the chief adviser and minister of the founder of the famous Vijianagar dynasty which held the Mahommedans in check from the 14th century to a few years before the rise of Sivaji.

Madanaparijata.—This was composed at the command of Madanapala (of the Jata race) who was the ruler of the Kashta on the banks of the Jumna.

Vyavahara Mayukha.—This is the leading authority paramount even to the Mitakshara in Gujarat, and only next to it in the Maharashtra. Nilakantha, the author of this work, also declares that he undertook it at the request of King Bhagvantadeva of Sangara dynasty. Its authority in Gujerat is the witness of the rule of the Peishwas.

Dayabhaga.—This is believed to have been written by Jimutavahana, who was, about the beginning of the 12th century of the Christian era, a minister of King Vishaksena.

'This brief examination shows that, owing to the common law of the Hindus which denied the power of legislation to any earthly ruler, every ruling sovereign was obliged to have a new compilation made of the law to be administered by his courts in order to bring it in line with the new order of things by incorporating new customs and discarding obsolete ones. That this was the object of these compilations is further shown by what is contained in the works themselves.'

'Vijnaneswara, when discussing the text prescribing unequal shares for sons according to the priority of birth, lays down the general principle that, notwithstanding a sacred text, a practice which runs counter to the conscience of the community should never be practised and gives several striking examples of those which had become

obsolete. So also Nilakantha, the author of the Mayukha, in discussing the age of the boy to be taken in adoption expressly refers, on the authority of his own father, to custom as justifying the adoption of a man of any age, notwithstanding texts to the contrary. More than once, he expressly refers to custom as justifying him in the particular interpretation put by him on ancient texts. Even more striking is a passage in the Viramitrodaya which was recently noticed by Mr. Justice Mookerji in *Basanta Kumar* v. *Jogendranath* (I. L. R. 33 Cal. 374). In it, the author gives as a 'reason against the acceptance of the view of the Mitakshara with regard to the person with whom reunion is permissible, the fact that if the Mitakshara view were accepted, then reunion with the daughter's son and the like, which is recognised by the practice of all people, would become improper.' 'There cannot, therefore, be any doubt that these treatises were intended to incorporate new customs and actually did so.'

'We may, then, safely conclude that the schools originated in different authors of commentaries and digests putting glosses on the ancient texts, in order to squeeze out from them rules and principles supporting the new customs prevailing in the provinces governed by them at the time of their composition. It follows from this, further, that the authoritativeness of a given work depends on the success achieved by it in assimilating the customary law of the province. So also the authoritativeness of a given rule would depend on its being in consonance with or at least not against recognised customs. When a writer extracts somehow a particular doctrine in order to give a Shastraic basis to new customs, he is bound, for the sake of consistency, to accept all the conclusions flowing from it. If, however, any of them happen to overstep the limits prescribed by the legal conscience of the community, they did not get assimilated into current law, but simply remained as witnesses of the logical acumen of the learned authors. For instance, the Smriti Chandrika the leading authority in Madras, adopts the Dayabhaga doctrine, which excludes barren daughters from inheritance as a logical conclusion from the religious principles underlying it. 'Its authority in this respect has not been accepted in Southern India (Mayne p. 707,7th edn.), because

custom has sanctioned the more humane Mitakshara doctrine. Similarly, the Mayukha is prepared to accept the conclusion necessarily resulting from the strict application of the doctrine of nearness of blood enunciated by the Mitakshara and allow the paternal uncle, the great-grandfather, and a son of half-brother to inherit together. Similarly also Nilakantha would have the grand-father and half-brother inherit together because they are both in the same degree (Mandlik p. 81). His opinion has not been, however, accepted even in Gujarat where the Mayukha is the leading authority.'

'From this it does not follow that the works themselves do not influence the growth of law. On points on which the legal consciousness of the community has not expressed itself, the views advocated in the work would be accepted as law. If, however, a particular view has been accepted as correct law and is supported by the work recognised as authority in the particular school, the only reasonable conclusion to draw is not that the old custom was completely remodelled by the author, but that either there was no custom either way when the work was written or that what is stated by him is in accordance with the prevalent custom.'*

Therefore, these schools have an historical origin. They have found recognition by the old Digest writers themselves. They talk of Southern, Eastern and Western schools. Under these circumstances British Courts were justified in recognising these schools. Although these schools were early recognised, the authorities which were special to some of them were not accessible for want of translations. This compilation removes that difficulty. Moreover, while there were some differences between these works, they deal with the same texts and arrive at the same conclusions generally. Therefore in the elucidation of points under controversy, a comparison of the different works is sure to throw much light.

If the account above given of the origin of these authorities be correct, it is clear that the rule of common sense which was laid down so emphatically by the judicial committee in the Shivaganga Case is perfectly sound and

* *See* "English Law Quarterly Review" for 1907, p. 203.

should never be departed from as was pointed out by a judge of acknowledged eminence in Sanskrit learning and juristic knowledge. In *Debiprasanna Roy* v. *Harendra Nath Ghose*, 37 Cal. 867, when Counsel for the respondent invited the Court to put its own interpretation on the word 'bhrata' ignoring the meaning which had been attached to it by the author of the Dayabhaga in a later passage, the learned Judge very properly made the following observations of great practical wisdom. His lordship Mr. Justice Mookerjee said, "It is obviously not permissible to examine the previous paragraphs to determine whether the conclusions reached by Jimutavahana, is or is not legitimately deducible from the texts upon which he placed reliance. In this connection it is well to bear in mind the warning given by the Judicial Committee in the case of *Collector of Madura* v. *Mootooramalinga Setupati*, that the duty of a judge administering Hindu Law is not so much to enquire whether doctrines disputed is fairly deducible from the earliest authorities as to ascertain whether it is one that has been received by the particular school of Hindu Law which governs the litigant parties. We must therefore decline to adopt the course which we are invited to follow by the learned vakil for the respondents, namely, to draw our own inference from an examination of the previous paragraphs where the expression used is 'bhrata' which it may be assumed is ambiguous."

It is a matter of great satisfaction that this principle has been reasserted so emphatically by such a high authority. No doubt sometimes even the Privy Council seem to forget this principle and embark on the risky adventure of putting novel interpretations of their own on passages found interpreted in the authoritative digest writers. The latest instance will be found in *Bai Kesserbhai* v. *Hunsraj Morarji* (30 Bom. 431), where they went behind the Mayukha in search of a general principle in justification of the order of heirs given in the text of Brihaspati and in effect overruled that authority. Similarly wherever this has been done, the result has been often disastrous. For instance, no one now doubts or can doubt that the present law of stridhan in the so-called Mitakshara provinces is anything but the Mitakshara law. As pointed out by West and Buhler so far as *Rishi texts go, no two* of them lay down the same

law on the subject. As a necessary consequence of this, among the digest-writers and commentators there is a hopeless conflict of opinion. It was the unique distinction of the legal genius of Vignaneswara that, by skilful interpretation he got rid of all difficulties and put the woman in all respects on the same legal pedestal as man.* He construed the word 'stridhan' as meaning all property belonging to the woman no matter how acquired and laid down the same rule of inheritance for all with the exception of only one kind of stridhan. Thus his work though the earliest among modern authorities, has propounded the most advanced view on the subject. Except in the case of one or two, subsequent writings on the subject mark the strength of the reactionary forces which he overcame, for they seem to feel it difficult to overcome the deep-rooted prejudice that the woman was in some way inferior to man.

But yet, the judicial Committee of the Privy Council have unwittingly set back the hand of the clock by not accepting implicitly the view of the Mitakshara and embarking on re-interpreting the word 'stridhan' in the narrow Dayabhaga sense. What is the result? At present each Mitakshara province has its own law of stridhan and everywhere the legal position of the woman has been put on a low level. Her right in the property inherited from her huband has been made into an estate which is neither freehold nor an ordinary life-tenancy. It can only be described as the Hindu Widow's Estate. Her estate as a mother has shared the same fate and this in spite of the fact that Vignaneswara, in respect of the property obtained on partition has distinctly indicated that her estate is as full as that of the man. This is not all. The most archaic and barbarous principle which denies to the woman the general right of holding property and which the orthodox logician of Bengal revived in his reactionary Dayabhaga, has been engrafted on the Mitakshara and included in the law

* Kishori Lal Sirkar in his Tagore lectures on Mimamsa rules points out that the disparagement of the legal position of woman was not warranted by the ancient law. He says: "As regards women, the actual law, as laid down by Mann and Jaimini, in no way, makes their status inferior to that of men. The two most important characters of a woman, are that of the wife and that of the daughter. In both these characters, the positive rules of law, in no way, compromise their position. Yet by following usage, later writers have laid it down that women have no rights unless recognised by express texts." K. L. Sirkar on Mimamsa Rules of Interpretation, pp. 305-6.

governing the Mitakshara province of Benares. Madras also adopted it for some time. In provinces within the jurisdiction of the High Court of Allahabad, no woman, not expressly mentioned in a text, can inherit, whereas in Madras she can, but only after all males. Bombay alone stands true to Mitakshara, although even there, the baseless distinction between females belonging to a family by birth and those that enter it by marriage has been adopted, in order to deprive the wives of agnates of a full estate. Their estates have been cut down into that of the widow. The mother's position was for long doubtful, but recently she has been refused the benefit of the Mitakshara view, although on the authorities found in the Law Reports it was not impossible to hold otherwise.* Of course, except in Bombay, some justification for depriving the woman of her natural rights may be found in the text-books which have been recognised as secondary authorities, such as Viramitrodaya and Smriti Chandrika. But that is no reason for the Courts of the nineteenth and twentieth centuries to resuscitate the law of the pre-Mitakshara days, that is to say, of the days anterior to the Norman Conquest of England.

This and other considerations would not have arisen in the British Indian Law Courts if they had realized that there was such a thing as Hindu jurisprudence, that this jurisprudence had slowly but surely evolved out of the legal consciousness of a nation thousands of years old, that it has its own rules of construction, that it is also subject to the 'law of progress' and that in order to administer it successfully, it has to be studied as systematically and carefully as any other system of jurisprudence, ancient or modern. True to the high position the judiciary in England holds in the civilized world, the Privy Council, wherever it could, did not hesitate to take a comprehensive view of the questions before it and within the limitations that are inseparable from judicial legislation, to interpret the law so as to bring it in line with the requirements of the modern times. As a recent example of this we might refer to its decision in 35 Calcutta 1. (P.C) where it says —"Now, it is said that the gift is void, as being contrary to the doctrine of Mushaa.

* Gandhi Maganlal *v.* Bai Jadab, 24 Bom. 192 (F. B.)

In the first place, even if the duty of Courts were to construe a prohibition of gifts of undivided shares of what is divisible, which should be applicable to the conditions of modern life, it would seem impossible in the case of shares, and extremely difficult in the case of freehold property in a town, to carry it out. But the attitude of law towards this doctrine of Mushaa does not involve any such constructive application of the doctrine. It was laid down in Mumtaz Ahmed *v.* Zubaida Jan (L. R. 16. I. A. 207 at 215) that the doctrine relating to the indivisibility of gifts of Mushaa is wholly unadapted to a progressive state of society, and ought to be confined within the strictest limits. Their lordships concur in the conclusion arrived at below, that it would be inconsistent with that decision to apply a doctrine, which in its origin applied to very different subjects of property, to shares in companies and freehold property in a great commercial town." Here the archaic Mahomedan Law of Mushaa was so interpreted as not to impede the social progress of the Mahomedan community under modern conditions, and no doubt that was the right thing to do. Courts in deciding questions of Hindu and Mahommedan laws, are engaged in judicial legislation of far-reaching consequence to the societies concerned. With the radical changes that have been introduced by modern conditions into every department of Indian life, new problems, social, economical and legal, naturally arise and it is one of the highest and most arduous responsibilities falling on our Courts to so mould the law as to be helpful in their right solution. Even within the narrow limits now assigned to them, Hindu and Mahommedan laws are going through the same process of development through which the Roman and British systems passed in the earlier stages of their growth. The form of law-making in which the Indian Courts are engaged, is peculiar and is one 'which naturally and inevitably arises out of the application and administration of the law,' especially where that law is to be evolved out of texts written at a time when very different conditions obtained in the country. The British legislature having adopted the policy of not interfering with these branches of law, our Courts are, or must be 'the recognised and permanent organs through which the mind of the communities expresses itself in shaping them' so as

to suit modern conditions. The Indian judge is their 'official mouthpiece, whose primary duty is to know and apply the law, but who, in applying it, expands it and works it out authoritatively,' as the digest-writers did less authoritatively before. He represents 'the legal intelligence of the communities'.

The sketch above given of the history of the origin of schools shows that before the British advent, this function was discharged and with eminent success by our Nibhandakaras or digest-writers. While merely professing to interpret ancient texts, they took full advantage of the scope afforded by the complicated rules of interpretation, evolved by writers on Mimamsa and moulded the law so as to bring it in line with the changed conditions of society. In a system of law which is more than four thousand years old, the successive strata of thought must naturally be represented by different texts enunciated at the time. The later commentator had only to pick and choose, among the texts which lent support to his own views. But in doing this, he had to observe certain rules and adopt certain principles which curtailed his freedom of choice. But nevertheless, within the limits set by them, he did not hesitate to interpret the laws so as to suit the changed conditions of his own time. No doubt, the freedom of the modern judge is still more limited. But even then, there are occasions when he can make his influence felt in the moulding of the legal consciousness of the societies concerned. As the digests which give us the law were written at a time when social conditions were altogether different, in them, beyond the basic principles, no direct solution could be found for all questions which now arise. They are questions which never could have occurred to the ancient writers. The modern judge must ascertain the view the digest writers presumably would have taken if the given question had been put to them, and this is exactly what the Privy Council did in dealing with the doctrine of Mushaa of Mahommedan law. But unfortunately, our own judges often lose sight of this important fact and interpret authorities either too literally or too widely and lay down principles which are unsuited to modern conditions or altogether foreign to the spirit of Hindu Law.

As an example of the former tendency, we may refer to the question of the right of the manager of a Hindu family to burden the family property with a debt incurred for the expenses of the marriage of a male coparcener.

Now, it is recognised on all hands that of the social evils which are eating into the vitals of the Hindu society, over-marriage is the worst. It is responsible for the lethargy and stagnation which have overwhelmed the same. Therefore there can be no question but that, unless the letter of the law makes it impossible to do so, it should be so interpreted as to discourage over-marriage. As regards females, there is no choice left to the Courts. The law is clear that every girl ought to be married, because marriage is the only '*Samskara*' for her. The same remark applies to those that are not among the twice-born. But with regard to the twice-born males, there is no such peremptory law. Every Hindu knows that there are hundreds of males among such castes who go to the end of their voyage of life without marrying. Society takes no notice of them. On the other hand, no female can pass a certain age without marriage. If in a Brahmin family, a girl attains puberty before marriage, the family is put out of social communion. Thus it is clear, that modern legal consciousness of Hindu society makes a distinction between the two cases. No doubt, even in the case of a male, it is usual to marry and if a boy is allowed to grow tall and old without marriage, Mrs. Grundy will not be slow in exercising the prerogative of her tongue. But there the matter stops, and no further social or legal inconveniences ensue. Under these circumstances, can there be any doubt as to what attitude the Courts must take with regard to the question of incurring debt for the marriage of a male coparcener in these communities? A Bench of the Madras High Court, consisting of European members, took a commonsense view of the question and held that marriage was not compulsory,* on the strength of observations made by the Lord Eldon of Madras in a previous reported decision.† But in a later decision, an eminent Indian Judge joined with an equally erudite judge of the Bombay High Court in giving

* Govindarajulu Narasimham *v.* Devera Bhotla Venkatanarasayya, 27 Mad. 206.
† Ponnappa *v* Papuvayyangar, 4 Mad. per Muttusawmy Iyer, J., p. 17.

judicial sanction to the questionable fashion of the Indian society to marry without any regard to the circumstances of the family. This is the result, it is respectfully submitted, of not bearing in mind the true function of the Court in such matters. It is impossible to say that the new fashion for having recourse to original Sanskrit authorities has not contributed to this unfortunate result. As has already been pointed out, in our law books texts may be found to support any view. Unless one fixed the goal which is to be reached before starting in search of a text, one is sure to be lost in the maze of conflicting texts. So also, treatises could be found in support of any view. In the vast field of Sanskrit literature, during the ages that have passed over it, there must have been works giving expressions to all shades of opinions supporting all sorts of views. Orthodox Sanskrit writers fully recognised this fact and therefore in arriving at their conclusions, they took care not to travel beyond the well-known and universally recognised authorities. For instance, the author of Mayukha says that in writing his work he "discarded much that was accepted by (literary) cheats, but had really no foundation." It is to avoid all these dangers and difficulties, the practice has been adopted in our courts of confining their attention to certain well-known works, and be exclusively guided by them. Now, if the question of marriage expenses had been approached, bearing the above considerations in mind, it seems, the only conclusion possible was that the decision in *Govindarajulu Narasimham* v. *Devera Bhotla Venkatanarasayya*, was correct.

So far as the texts go, it is admitted that the question has to be decided in accordance with what is contained in the Mitakshara. Now, Mitakshara sets forth all the conflicting texts as to the indispensability or otherwise of marriage as a *Samskara* and deliberately adopts the view that so far as males are concerned it is entirely a matter of choice. He says "As all these (three) views of 'aggregation,' 'option,' and 'exclusion,' have their basis in the 'Sruti or the Vedas,' one may choose them according to one's own wish. Therefore, the statement made by some pseudo-pandits that the perpetual studentship being a creature only of a Smriti is excluded by the order of the

householder which is prescribed by a Vedic ordinance, (and the statement) that the former is intended only for the impotent, the blind and such others who are debarred from entering the order of the householder, must be rejected as they are the outcome of a want of study of the Vedas. Moreover, just as the lame and other deformed persons who are incompetent to observe the Vedic rites such as *Vishnukramana* and *Ajya Vikshana* are not entitled to undertake these Vedic rites prescribed for married men, so are they incompetent to fetch the *Udakumba* and go round soliciting alms (in the manner prescribed for Brahmacharis) by the ceremonial law of Smritis. How is it then possible to account for (the prescribing of) the perpetual studentship and such other orders of life by taking (the passages relating to) them as having reference to the lame and (such other deformed persons)?" § This clear statement of Vijnaneswara's view has been frittered away by laborious arguments based on passages which deal with the question in an indirect manner or not at all. For instance, in the Bombay judgment * two slokas of Yajnavalkya found in the chapter on Partition are brought into requisition to determine the question whether marriage is included in the word *Samskara*. Of course, nobody questions whether marriage is a *Samskara* or not. But the question is whether it is a *Samskara* indispensable in the case of a twice-born male. No doubt in the opinion of some, it is indispensable, but in the opinion of Vijnaneswara, it is not. This position is attacked in the Madras judgment by appealing to the famous doctrine of the three natal debts which is as old as Hinduism. In Mimamsa, there is a special chapter dealing with it.† There can be no question but that *prima facie*, this doctrine makes marriage a necessary sacrament. But Jaimini is not our lawgiver, but Vijnaneswara. The latter squarely meets the difficulty by bringing his unrivalled learning and logical acumen to bear on it, and so interpret the doctrine as not to conflict with his own view in favour of Vikalpa (or option). Here is what he says:—"And it must not be imagined that the ordinance as to the discharging of the three debts does, by its own force, imply (the necessity of

§ *See* Mysore Chief Court Reports, Vol. XV, p. 172. * 32 Bom. 81.
† *See* Sirkar's Mimamsa Rules of Interpretation, pp. 435-38.

taking) a wife, for, like the rule as to acquisition of learning and wealth (the rule to beget a son) applies only when there is a wife married for other reasons. As to the objection, that by birth itself, the begetting of the son and other duties are made indispensable, because of the Vedic text which says that 'a Brahmin is born a debtor in three respects and the debt owed to the Rishis (is discharged) by Brahmacharya (studentship), that to the Devas by Yagna and that to the manes by bringing forth children'; (we say) it is not so; because no man becomes, merely by birth, entitled to perform Yagna and other ceremonies even when he has not taken a wife or kindled the sacred fire (kept by a householder). Therefore, the meaning of the Vedic text is that the Brahmin and the rest, *when they become possessed of the status necessary to perform them* must perform the Yagna and the rest. Hence, to one whose Upanayana ceremony has been performed, the study of Vedas alone is indispensable, and likewise begetting a son, to one who has taken a wife and kindled (the householder's fire). Thus (everything is) unobjectionable."* There cannot be any doubt as to the meaning of this passage. Why then put back the hand of the clock of progress by ruling that the manager of a Hindu joint family can involve the family in debt to give a male coparcener an opportunity to enjoy the luxury of marriage which *ex hypothesi* the family cannot then afford? In dealing with this question, that the true perspective has been lost in the mist of over-argument, is clear from the nature of some of the arguments used. For instance, in the Madras judgment there occur these passages: "There are two paths laid down for the Hindu in the sacred texts. One is the path of work or attachment to the things of this world, and the other the path of non-attachment or renunciation. The four *asramas* or stages of life are prescribed for the regenerate classes, or, at all events, for the Brahmin. The journey from stage to stage in regular order of succession is contemplated as progress along the path of worldly work. And every Hindu of the twice-born classes has to pass from each stage to the next and until he develops complete non-attachment in the last, the stage of the ascetic, when he prepares himself

* *See* Mysore Chief Court Reports, Vol. XV, p. 173.

for final liberation. It is true that it is laid down in the Srutis that if he has conquered his passions and cultivated the feeling of non-attachment he may pass direct, without going through the intermediate stages, to the *asrama* of the sanyasin. But except for him who has thus qualified for entry direct into other *asramas* than that of the householder, the stage of householder is practically compulsory. The twice-born Hindu is not to be a student as long as he chooses. He may remain a *Naishtika Brahmachari* devoted to lifelong studentship under strict conditions. Slokas 49 and 50 of Yagnavalkya, Acharadhyaya, have been translated as follows by Mandlik: "The *Naishtika Brahmacharin* is to live near the *Acharya*; in his absence, near his son or his wife, or his fire. In this manner the *Bramacharin*, using his body, and subduing his senses, attains the world of *Brahma*, and is not born again." I translate the commentary of the Mitakshara on these verses as follows: "In this manner, *i.e.*, in the manner stated, *Naishtika*, *i.e.* one who conducts himself till death, he shall live all his life near his preceptor. He shall not be his own master after the period of receiving instruction in the Veda. In his absence, near his son; in the absence of the latter, near his wife; in her absence, near the fire; disciplining his body in the manner stated, his senses being controlled, the *Brahmachari* attains the world of *Brahma*, *i.e.*, achieves deathlessness. Never is he born here again." Apararka in his commentary on the same verses at pages 71 and 72 of Volume 46 of the Anandasrama Series enters into a more elaborate explanation of the two classes of *Brahmacharis*, *Upakurvana* and *Naishtika*, the former being one who passes to the stage of *Grahastha* in the ordinary course of life, and the latter being one who stays with his preceptor for life under rigid rules of self-discipline. In Chapter II of Manu, verses 243 to 249 deal with the *Naishtika Brahmachari*. It is enough to quote the first of those verses in order to indicate that the life of the *Naishtika* is a life of discipline under the teacher for life to qualify for liberation. Verse 243 (Buhler's translation) says: "But if a student desires to pass his whole life in the teacher's house, he must diligently serve him until he is freed from this body." But to the *Upakurvana* or a student who remunerates his teacher to pass on with his leave to

the next stage of life, Manu has the following injunction. Chapter III, verse 2 says: "A student who has studied in due order the three Vedas, or two or even one only, without breaking the rules of studentship, *shall* enter the order of householders." Verse 4 says: "Having bathed, with the permission of his teacher, and performed, according to the rule, the *Samavarthanam* (the rite on returning home), a twice-born man shall marry a wife of equal caste who is endowed with auspicious bodily marks".* "The obligatory character of marriage or entry into the order of householder is thus propounded by Manu with great emphasis. Verses 51 and 52 of Yagnavalkya, *Acharadhyaya* and also verses 45, 56 and 57 of the *Prayaschittadhyaya* (see pages 167, 249 and 250 of Mandlik) enforce the same view. Both the commentators of Manu and the commentators of Yagnavalkya have come to the conclusion, after a full discussion of Sruti and Smriti texts, that the stage of householder is obligatory on all the twice-born. But to those who have pursued the path of non-attachment, *Naishtika Brahmacharya* or perpetual studentship or entry from studentship into the stage of the hermit or ascetic direct is open. Some indeed have maintained that there is no warrant for the *asramas* of hermit and ascetic and that the stage of householder is the only one in which a man is at liberty to pass his life. The text of Gautama, Sacred Books of the East, Vol. II, verse 36 at page 193, supports that view: "But the venerable teacher (prescribes) one order only, because the order of householders is explicitly prescribed (in the Vedas)." And, in verse 1, he expresses it as the opinion of "some" that "he (who has studied the Veda) may make his choice (which) among the orders (he is going to enter)." Gautama's view is, however, rejected by Medhatithi and Vijnaneswara. But that rejection is not to be understood as a sanction to each man to follow which order he likes or to be in no order at all. Marriage is *Vyavasthitha Vikalpa* or fixed alternative, *i.e.*, compulsory when certain conditions exist (see Jaiminiya Nyayamala, Chapter 12, Pada 4,

* Devulapalli Kameswara Sastry *v.* Polavarapu Veeracharlu, 20 M. L. J, p. 855.

Adikarna 7) and not an *Aichchehika Vikalpa* or alternative to be chosen according to pleasure (Jaiminiya Nyayamala, Chapter 12, Pada 3, Adhikarna 4). Except to the man who pursues the path of non-attachment to all others the order of a householder is a necessary stage in the journey of life. A person is not justified in being in none of the *Asramas.*"*

This is no doubt learned and eloquent, but is it correct? If the translation given above of the passage in *Prayaschitta kanda* of Mitakshara be not altogether wrong, the statement that "the commentators of Yajnavalkya have come to the conclusion after a full discussion of Sruti and Smriti texts, that the stage of the householder is obligatory on all the twice-born" is undoubtedly incorrect. As to the argument that the law will not allow a man to continue in the Asrama of Brahmacharin unless he has proved his fitness "to pursue the path of non-attachment" may be very orthodox, but is certainly not common sense. Are there not rules equally rigid and exacting in the case of ordinary Brahmacharya and is it not known universally that in these days no Brahmacharin is prepared or expected to observe them? Why then are the twice-born boys allowed to enter Brahmacharya nevertheless and allowed to remain as such during the few years that elapses between Upanayana and marriage? Who is to decide whether a man has the requisite non-attachment or not or what are the tests to bea pplied? Where is the law which raises the presumption necessarily implied in the above view, that one is not fit to remain a Brahmacharin after one attains the marriageable age of boys? Do the present day Brahmacharins observe the rules 'that they should not wash their teeth, nor attend music parties, etc.,' and if not, why are they allowed to become Brahmacharins. Then again, are all boys necessarily married within a certain period as in the case of girls? And if not, in all cases where marriage is postponed for years or even for life, is the offence of 'anasrama' presumed to be committed? If not to marry renders a

* Devulapalli Kameswara Sastry v. Polavarapu Veeracharlu, 20 M. L. J., p. 855.

Brahmacharin '*anasrami*,' as is assumed here, when is he converted into an '*anasrami*' and at what age? Suppose a man goes on *hoping* to marry, but never does, is he '*anasrami*'? If he is, then is not every Brahmacharin in the same boat till he marries? If so, then, does not this lead to the conclusion that marriage should take place, in the case of every boy not fit to tread the path of non-attachment, soon after Upanayana, seeing that in these days, *Gurukulavasa* and other duties of an ordinary Brahmacharin are not observed. In the passage cited from Acharakanda—*Naishtika* Brahmacharin is enjoined to live with his Guru or his family. The inference of the learned judge seems to be, that unless one is prepared to do this, he cannot remain such a Brahmacharin, and if he does so, he becomes an '*anasrami*.' So also in the case of the *Upakurvana* Brahmacharin, he is enjoined to live with his *guru*, feed himself and his *guru* by seeking alms and observe many other restrictions. If the above argument as to *Naishtika* be correct, then the same consequences should fall on him. If so, it would necessarily follow, that in these days, as no boy is prepared to undergo the old Vedic discipline, there can be no Upanayana and no Brahmacharin.

Therefore, the correct view seems to be this: Courts of law have nothing to do with the ecclesiastical fitness of a party for a particular order. It is enough for their purposes that the ecclesiastical law does not make it impossible for a twice-born to remain a Brahmacharin all his life. On this being shown, on the analogy of the principle embodied in the well-known maxim, *omnia praesumuntur rite esse acta*, a conclusive presumption would be raised, that one who remained a Brahmacharin all his life, did so, in accordance with the rules of ecclesiastical law. They would not sit in inquisition to decide as to the party's mental or moral fitness.

Then again, not far from the above-cited passage of the Mitakshara *re Naishtika* Brahmacharin, is a passage that a Brahmin who loses his wife should at once re-marry,

unless he is prepared to enter the next order* because says Vijnaneswara, 'otherwise, he would be an *Anasramî*.' Would a manager, then, be entitled to involve the family in debt for the re-marriage expenses of such a coparcener? If he could do so, does it not follow that, if an aged manager of a family, say, who is fifty or sixty years old, chooses to marry a young girl, as is sometimes done, with money borrowed on the credit of the family property, this debt would be as binding on other members as the one incurred for their own marriages?

For these reasons *inter alia*, it is submitted that the argument of the learned judge is based on an erroneous mixing up of ecclesiastical and positive law, owing probably to their intimate association with each other in this as in other places.

This question has been dealt with here at this length in order to bring home to the reader, the caution and care needed in interpreting and administering Hindu law. If to blindly apply principles of foreign systems to the Hindu law leads to undesirable results, to have recourse to Sanskrit works indiscriminately without confining the attention to particular books of authority, and to embark on interpretations even of those texts without scrupulous regard to the legal exigencies of modern times, leads to disastrous results.

If, even in the administration of the up-to-date systems of the law of the West, the assistance of the four methods of legal science is needed, much more so is it in the case of a system like the Hindu law. From the nature of this law, there is not much scope for the 'metaphysical method' although some trace of it is found in the Mimamsa. The 'analytical method' is every day employed by Courts. But sufficient attention has not been paid, except in the earlier decisions, to the 'historical and comparative methods.' Of course, owing to the absence of a proper Indian history as accurate and certain as the Roman, the scope for the appli-

* See Setlur's Mitakshara, Acharakanda, Book I, Ch. II, Sec. 128, Yaj., verse 89.

cation of the 'historical method' is indeed limited. But, nevertheless, the chronological sequence of most of our works has been established beyond doubt and that is enough for the practical application of this method.

As to 'comparative method,' no attempt has been made in this direction by any modern writer. To find traces of it, one has to travel back to the times of Colebrooke, Holland, West and Markby.

The compilers of the work now offered may well claim credit for placing within the reach of the Profession a book which will enable it to compare what writers of different schools have to say on a given point, so as to gather without difficulty all light to be found in the works which are authorities in different schools and focus them on points under consideration. This work will undoubtedly serve that purpose excellently well. Some texts hitherto untranslated have also been included in the compilation. The large collection of texts on Sapindaship ~~are~~ of special value.

S. S SETLUR.

THE LAW OF INHERITANCE,

FROM THE

MITÁKSHARÁ,

A COMMENTARY BY VIJÑANESVARA ON THE INSTITUTES OF YAJÑAVALKYA.

CHAPTER I.

SECTION I.

Definition of Inheritance and of Partition.—Disquisition on Property.

1. Evidence, with reference to its classification into human and divine, has been explained; the partition of heritage is now explained by the Image of holiness.(a)

2. Here the term heritage (dáya) signifies that wealth which becomes the property of another, solely by reason of (his) relation to the owner.

3. It is of two sorts: unobstructed (Apratibandha,) or liable to obstruction (Sapratibandha.) Now the wealth of the father and of the paternal grandfather, becomes the property of his sons and of his grandsons, in right of their being his sons and grandsons respectively and that is an inheritance not liable to obstruction. But property devolves on paternal uncles, brothers and the rest, upon the death of the owner, and in default of male issue: and thus the existence of a son and the existence of the owner are impediments to the succession; and, on their ceasing, the property devolves [on the successor] in right of his being uncle or brother. This is inheritance subject to obstruction. The same should be inferred in respect of their sons and the rest.

4. Partition (vibhága) is the adjustment of the ownership of many persons in the aggregate wealth by assigning particular portions of the aggregate to a several ownership.

(a) Yajñavalkya.

5. Entertaining the same opinion, Nárada says, "Where a division of the paternal estate is instituted by sons, that is a department of law called by the wise partition of heritage."(1) "Paternal" here implies any relation, which is a cause of property. "By sons" indicates relationship in general.(*a*)

6. The points to be explained under this [head of inheritance], are, at what time, how, and by whom, a partition is to be made and of what. The time, the manner, and the persons, when, in which, and by whom, it may be made, will be explained in the commentary on the stanzas on those subjects respectively. What that is, of which a partition takes place, is here considered.

7. Does property arise from partition? or does partition of pre-existing property take place? Under this [head of discussion,] proprietary right is itself necessarily explained: [and the question is] whether property be deduced from the sacred institutes alone, or from other [and temporal] proof.

8. [It is alleged that](*b*) the inferring of property from the sacred code alone is right, on account of the text of Gautama; "An owner is by inheritance, purchase, partition, seizure, or finding. Acceptance is for a Bráhmana an additional mode; conquest for a Kshatriya; gain for a Vaisya and Súdra."(2) For, if property were deducible from other proof, this text would be rendered useless. So the precept, ("A Bráhmana, who seeks to obtain anything, even by sacrificing or by instructing, from the hand of a man, who had taken what was not given to him, is regarded precisely as a thief) (3)" which directs the punishment of such as obtain property by officiating at religious rites, or by similar means, from one who has taken what was not given to him, would be unsound if property were temporal. Moreover, were property a worldly matter, one should not say "My property has been wrongfully taken by him;" for it would belong to the taker. Or, [if it be objected that] the property of another was seized by this man, and it therefore does not become the property of the usurper; [the answer is,] then no doubt can arise, whether it appertain to one or to the other, any more than in regard to the distinction of gold, silver, or the like. Therefore property is a creature of holy institutes exclusively.

9. This is thus answered; property is temporal only, for it effects transactions relative to worldly purposes, just as rice or similar substances do: but the consecrated fire and the like, based on the sacred institutes, do not aid actions relative to secular purposes. It may be said that a consecrated fire does effect the

(1) Nárada, xiii, 1.
(2) Gautama x, 39—42.
(3) Manu viii; 340.

(*a*) There are various readings noticed of this text. Every one of them while obviating inaccuracies in other readings is itself not free from inaccuracies.

(*b*) With para 8 begins the discussion as to whether property is a creature of the sacred law or a matter of popular recognition. The author, as usual with Sanskrit writers, says all that could be said in favor of the opponent's view and by the principle of *reductio ad absurdum* establishes his own view.

boiling of food and so the rest. [The answer is] No; for it is not as such, that the consecrated flame effects the boiling of food, but as a fire perceptible to the senses: and so, in other cases. But, here, it is not through its visible form, either gold or the like, that the purchase of a thing is effected, but through property only. That which is not a person's property in a thing, does not give effect to his transfer of it by sale or the like. Besides, the use of property is seen also among inhabitants of barbarous countries, who are unacquainted with the practices directed in the sacred code: for purchase, sale, and similar transactions are observed among them.

10. Moreover, such as are conversant with the science of reasoning, deem regulated means of acquisition a matter of popular recognition. In the third clause of the Lipsá Sútra, (a) the venerable author has examined and pronounced untenable an objection to it, that, 'if restrictions, relative to the acquisition of goods, apply to the religious ceremony, there could be no property, since proprietary right is not temporal;' [by showing, that] 'the efficacy of acceptance and other modes of acquisitions in constituting proprietary right, is matter of popular recognition.' Does it not follow, if the mode of acquiring the goods concern the religious ceremony, there can be no right of property, and consequently no celebration of a sacrifice? [Answer] It is a blunder of any one who affirms that acquisition does not produce a proprietary right, since this is a contradiction in terms. Accordingly, the author, having again acknowledged property to be a matter of popular recognition, when he states the demonstrated doctrine, proceeds to explain the purpose of the disquisition in this manner. 'Therefore a breach of the restriction affects the person, not the religious ceremony:' and the meaning of this passage is thus expounded, 'If restrictions, respecting the acquisition of chattels affect the religious ceremony, its celebration would be complete only if effected with such property as was acquired consistently with those rules and not so, if performed with wealth obtained by infringing them; and consequently, according to the objector's opinion, the fault would not affect the man, if he deviated from the rule: but, according to the demonstrated conclusion, since the restriction, regarding acquisitions, affects the person, the performance of the religious ceremony is complete, even if performed with property acquired by a breach of the rule; and it is only an offence on the part of the man, because he has violated an obligatory rule.' It is consequently acknowledged, that even what is gained by infringing restrictions, is property: because, otherwise, there would be no completion of a religious ceremony.

(a) *The Lipsá Sútra.* The aphorism here referred to is the second *Adhikarana* in the first *páda* of the fourth book of Jaimini's Sútras. There the discussion is whether the acquisition of property in other than the modes sanctioned merely casts a blame on the acquirer or vitiates any sacrifices, &c. performed by the acquirer with property so acquired, the result of the disquisition being in favor of the first alternative.

11. From what has been said it should not be argued that even what is obtained by robbery and other nefarious means, would be property. For proprietary right in things so obtained is not recognized by the world and it disagrees with established practice.

12. Thus, since property, obtained by acceptance or any other [sufficient] means, is established to be temporal; the acceptance of gifts as well as other [prescribed] modes for a Bráhmana, conquest and similar means for a Kshatriya, husbandry and the like for a Vaisya, and service and the rest for a Súdra, are propounded as restrictions intended for spiritual purposes; and inheritance and other modes are stated as means common to all. "An owner is by inheritance, purchase, partition, seizure or finding."(1)

13. Unobstructed heritage is here denominated "inheritance." "Purchase" is well known. "Partition" means heritage subject to obstruction. "Occupation" or seizure is the appropriation of water, grass, wood and the like not previously appertaining to any other [person as owner.] "Finding" is the discovery of a hidden treasure or the like. 'If these reasons exist, the person is owner.' If they take place, he becomes proprietor. 'For a Bráhmana, that which is obtained by acceptance or the like, is additional;' not common [to all the classes]. "Additional" is understood in the subsquent sentence: 'for a Kshatriya, what is obtained by victory, or by amercement or the like, is peculiar.' In the next sentence, "additional" is again understood: what is gained or earned by agriculture, guarding of cattle, [traffic,] and so forth, is for a Vaisya peculiar; and so is, for a Súdra that which is earned in the form of wages, by obedience to the regenerate classes and by similar means.' Thus likewise, among the various causes of property which are familiar to mankind, whatever has been stated as peculiar to certain mixed classes in the direct or inverse order of the classes, (as the driving of horses, which is the profession of sútas, and so forth,) is indicated by the word "earned" (nirvishta): for all such acquisitions assume the form of wages or hire; and the noun (nirvésa) is explained in the Trikándi (a) as signifying wages.

14. As for the precept respecting the succession of the widow and the daughter, &c., the declaration [of the order of succession,] even in that text is intended to prevent mistake, (although the right of property be a matter familiar to the world,) where many persons might [but for that declaration] be supposed entitled to share the heritage by reason of their affinity to the late owner. The whole is therefore unexceptionable.

15. As for the objection that, if property were temporal, it could not be said "my property has been taken away by him;"

(1) Gautama x. 39.

(a) Trikándi is the name of the Sanskrit Dictionary by Amarasimha; so called because it consists of three kandas or chapters.

that is not sound, for a doubt respecting the proprietary right does arise through a doubt concerning the purchase or other transaction which is the cause of that right.

16. The purpose of the preceding disquisition is this. A text says "When Bráhmanas have acquired wealth by a blameable act, they are purged of the guilt by the abandonment of such wealth, prayer, and rigid austerity." (1) Now, if property be a creature of sacred ordinances, that which has been obtained by accepting presents from an improper person, or by other means which are reprobated, would not be property, and consequently would not be partible among sons. But if it be a wordly matter, then, even what is obtained by such means is property and may be divided among heirs; and the atonement above mentioned is enjoined on the acquirer only; but sons get the wealth by inheritance, and therefore no blame attaches to them, since Manu declares "There are seven virtuous means of acquiring property: *viz.*, inheritance, &c." (2)

17. Next, the doubt to be cleared is whether property arises from partition, or whether partition pre-supposes property.

18.(*a*) Of these [positions], that of property arising from partition is right, as a man, to whom a son is born, is enjoined to maintain a holy fire: for, if property were vested by birth alone, the estate would be common to the son as soon as born; and the father would not be competent to maintain a sacrificial fire and perform other religious duties which are accomplished by the use of wealth.

19. Likewise the prohibition of a division of that which is obtained from the liberality of the father previous to separation, would become unreasonable: since no partition of it can be supposed, for it has been given by consent of all parties. But Nárada does propound such a prohibition: "Excepting what is gained by valour, the wealth of a wife, and what is acquired by science which are three sorts of property exempt from partition; and any favour conferred by a father." (3)

20. So the text concerning an affectionate gift, ("What has been given by an affectionate husband to his wife, she may consume as she pleases, when he is dead, or may give it away, excepting immoveable property;") (4) would not be correct, if property were vested by birth alone. Nor is it right to connect the words "excepting immoveable property" with the terms "what has been given" [in the text last cited;] for that would be a forced construction by connexion of disjoined terms.

21. As for the text "The father is master of the gems, pearls and corals, and of all [other moveable property]: but neither the

(1) Manu x. 111.
(2) Manu x. 115.
(3) Nárada xiii. 6.
(4) II. Cole Dig. 595, ccccl.xxvi.

(*a*) The author states the opponent's arguments in paras. 18—22 both inclusive and then refutes them in the 23*rd* and subsequent paragraphs.

father, nor the grandfather, is so of the whole immoveable estate; (1) and also (the text) "By favour of the father, clothes and ornaments are used, but immoveable property may not be consumed, even with the father's indulgence;" (2) which passages forbid a gift of immoveable property through favour; they both relate to immoveables which have descended from the paternal grandfather. When the grandfather dies, his effects become the common property of the father and sons; but it appears from this text alone, that the gems, pearls and other moveables belong exclusively to the father, while the immoveable estate remains common.

22. Therefore property is not by birth, but by death of the owner, or by partition. Accordingly there is no room for supposing that a stranger could not be prevented from taking the effects, because the property was vacant after the death of the father before partition. So likewise, in the case of an only son, the estate becomes the property of the son by the father's decease and does not require partition.

23. To this we reply: It has been stated, that property is a matter of popular recognition; and the right of sons and the rest by birth, is most familiar to the world and cannot be denied; but the term partition is generally understood to relate to effects belonging to several owners, and does not relate to that which appertains to another, nor to property which apparently has neither an enjoyer nor an owner. For the text of Gautama also says. "Let ownership of wealth be taken by birth; so the venerable teachers direct." (3)

24. Moreover the text above cited "The father is master of the gems, pearls, &c." (§ 21) is pertinent only on the pre-supposition of a proprietary right vested by birth. Nor is it right to affirm that it relates to immoveables which have descended from the paternal grandfather: since the text says "neither the father, nor the grandfather." This maxim that the grandfather's own acquisition should not be given away while a son or grandson is living indicates a proprietary interest by birth. As, according to the other opinion, the precious stones, pearls, clothes, ornaments and other effects, though inherited from the grandfather, belong to the father under the special provisions of the law; so, according to our opinion, the father has power, under the same text, to give away such effects, though acquired by his father. There is no difference.

25. As for the text of Vishnu (§ 20), which mentions a gift of immoveables bestowed through affection, it must be interpreted as relating to property acquired by the father himself and given with the consent of his son and the rest: for, by the passages [above cited, and others] *viz.* "The father is the master of the gems,

(1) Cited as Yajñavalkya's by the author of the Dayabhaga, but not found in his institutes.

(2) II. Cole Dig. 259, xcv.

(3) Not found in Gautama of the S. B. E. series.

pearls, &c." (§ 21), properties other than immoveables were alone determined fit to be given away.

26. As for the alleged disqualification for religious duties which are prescribed by the Vedas, and which require for their accomplishment the use of wealth, (§ 18) power for such purposes is inferred from the imperative nature of the precept [which enjoins their performance].

27. Therefore property in the paternal or grandfather's estate is only by birth, although the father have independent power in the disposal of effects other than immoveables, for indispensable acts of duty and for purposes prescribed by text of law, as gifts through affection, support of the family, relief from distress, and so forth: but he is subject to the control of his sons and the rest, in regard to the immoveable estate, whether acquired by himself or inherited from his father or others; for it is laid down in the Smritis, "Though immoveables or bipeds have been acquired by a man himself, a gift or sale of them should not be made without convening all the sons. They, who are born, and they who are yet unbegotten, and they who are still in the womb, require the means of support; no gift or sale should, therefore, be made".(1)

28. An exception to it follows: "Even a single individual may conclude a donation, mortgage, or sale, of immoveable property, during a season of distress, for the sake of the family and especially for pious purposes. (2)

29. The meaning of that text is this: while the sons and grandsons are minors and incapable of giving their consent to a gift and the like, or while brothers are so and continue unseparated, even one person, who is capable, may conclude a gift, hypothecation, or sale, of immoveable property, if a calamity affecting the whole family require it, or the support of the family render it necessary, or indispensable duties such as the obsequies of the father or the like make it unavoidable.

30. As for the following passage, "Separated sapindas, as those who are unseparated, are equal in respect of immoveables; for one has not power over the whole, to make a gift, sale or mortgage:" (3) this must be thus interpreted: among unseparated sapindas, the consent of all is indispensably requisite, because no one is fully empowered to make an alienation, since the estate is common: but, among separated (sapindas), the consent of all tends to the facility of the transaction, by obviating any future doubt whether they be separate or united: it is not required, on account of any want of sufficient power, in the single owner; and the transaction is consequently valid even without the consent of separated (sapindas).

31. Also in the text, which lays down that, "Land passes by six formalities; by consent of townsmen, of kinsmen, of neighbours,

(1) Attributed to Vyasa by other authors.
(2) Cited as Brihaspati's in the Vivadaratnakara.
(3) Brihaspati xxv. 93.

and of heirs, and by gift of gold and of water;" (1) consent of townsmen is required for the publicity of the transaction, since it is provided, that "Acceptance of a gift, especially of land, should be public:" (2) but the contract is not invalid without their consent. The approbation ef neighbours serves to obviate any dispute concerning the boundary. The use of the consent of kinsmen and of heirs has been explained.

32. By gift of gold and of water.] Since the sale of immoveables is forbidden ("In regard to the immoveable estate, sale is not allowed; it may be mortgaged by consent of parties interested;") (3) and since donation is praised ("Both he who accepts land, and he who gives it, are performers of a holy deed, and shall go to a region of bliss,) (4) if a sale must be made, it should be conducted, for the transfer of immoveable property, in the form of a gift, delivering with it gold and water [to ratify the donation.]

33. In respect of the right by birth, to the estate paternal and ancestral, we shall mention a distinction under a subsequent text. (Section 5. § 3.)

SECTION II.

Partition equal or unequal.—Four periods of partition.—Provision for wives.—Exclusion from partition of a son who has a competence.

1. At what time, by whom, and how, partition may be made, will be next considered. Explaining those points, the author says:—

"*When the father makes a partition, let him separate his sons* [*from himself*] *at his pleasure, and either give the eldest the best share, or* [*if he choose*] *all may be equal sharers.*" (5)

2. When a father wishes to make a partition, he may at his pleasure separate his children from himself, whether one, two or more.

3. No rule being suggested (for the will is unrestrained,) the author adds, by way of restriction, "he may separate (for this term is again understood) the eldest with the best share," the middlemost with a middle share, and the youngest with the worst share.

4. This distribution of best and other portions is propounded by Manu. "The portion deducted for the eldest is the twentieth part of the heritage, with the best of all the chattels; for the middlemost, half of that; for the youngest, a quarter of it." (6)

5. The term "either" (§ 1) is relative to the subsequent alternative "or all may be equal sharers." All, *i.e.*, the eldest and the rest, should be made partakers of equal portions.

(1) I. Cole Dig. 441. xxxiii.
(2) Not found in the S.B.E. Series or in Cole Dig.
(3) Not found in, S. B. E. Series or in Cole Dig.
(4) Quoted from the Bramha Vaivarta Purana, II. Cole. Dig. 444, xlii.
(5) Yajnavalkya ii, 115. (6) Manu, ix. 112.

6. This unequal distribution is allowed in respect of his self-acquired property. But, if the wealth descended to him from his father, an unequal partition at his pleasure is not proper: for equal ownership will be declared.

7. One period of partition is when the father desires separation, as expressed in the text, "When the father makes a partition." (§ 1) Another period is while the father lives, but is indifferent to wealth and disinclined to pleasure, and the mother is incapable of bearing more sons; at such a time a partition is admissible, at the option of sons even against the father's wish as is shown by Nárada who premises partition subsequent to the demise of both parents ("Let sons equally divide the wealth when the father is dead;") (1) and adds "Or when the mother is past child-bearing and the sisters are married, or when the father's sensual passions are extinguished." (2) Here the words "let sons equally divide the wealth" are understood. Gautama likewise, having said "After the demise of the father, let sons share his estate;" (3) states a second period, "Or when the mother is past child-bearing;" (4) and a third, "While the father lives, if he desire separation." (5) So, while the mother is capable of bearing more issue, a partition is allowable at the choice of the sons, though the father be unwilling, if he be addicted to vice or afflicted with a lasting disease. Sankha declares: "Partition of inheritance takes place without the father's wish, if he be old, perverse, or diseased." (6)

8. Two sorts of partition at the pleasure of the father have been stated, namely, equal and unequal. The author adds a special rule in the case of equal partition;

"If he make the allotments equal, his wives, to whom no separate property has been given by the husband or the father-in-law, must be rendered partakers of like portions." (7)

9. When the father, by his own choice, makes all his sons partakers of equal portions, his wives, to whom peculiar property had not been given by their husband, or by their father-in-law, must be made partakers of shares equal to those of sons. But, if separate property had been given to a woman, the author subsequently directs half a share to be allotted to her: "or if any had been given, let him assign the half."

10. But, if he give the superior allotment to the eldest son, and distribute similar unequal shares to the rest, his wives do not take such portions, but receive equal shares of the aggregate from which the son's deductions have been subtracted, besides their own appropriate deductions specified by Apastamba: "The furniture in the house and her ornaments are the wife's [property]" (8).

(1) Nárada, xiii. 2.
(2) *Ibid*, xiii. 3.
(3) Gautama, xxviii. 1.
(4) *Ibid*, xxviii. 2.
(5) Gautama, xxviii. 2.
(6) H. Cole. Dig., 203, xvii.
(7) Yájñavalkya, ii. 116.
(8) Apastamba, ii. 6; 14; 9.

11. To the alternative before stated (§ 1) the author propounds an exception:

"The separation of one who is able to support himself and is not desirous of participation may be effected by giving him some trifle."(1)

12. To one who is himself able to earn wealth, and who is not desirous of sharing his father's wealth, anything whatsoever, though not valuable, may be given, and the separation or division may be thus effected by the father, so that the children or other heirs of that son may have no subsequent desire to claim a partition.

13. The distribution of greater and less shares has been shown (§ 1.) To forbid, in such cases, an unequal partition made in any other mode than that which renders the distribution uneven by means of deductions such as are directed by the law, the author adds

"A legal distribution, made by the father among sons separated with greater or less share, is pronounced valid."(2)

14. When the distribution of more or less among sons separated by an unequal partition is legal, or such as is ordained by the law, then that division, made by the father, is irrevocably made and cannot be afterwards set aside: so it is declared by Manu and the rest. Else it fails, though made by the father. Such is the meaning; and in like manner, Nárada declares "A father, who is afflicted with disease, or influenced by wrath, or whose mind is engrossed by worldly pleasures, or who acts otherwise than as the sacred law permits, has no power in the distribution of the estate."(3)(a)

SECTION III.

Partition after the father's decease.

1. The author next propounds another period of partition, other persons as making it, and a rule respecting the mode.

"Let sons divide equally both the effects and the debts, after their two parents."(4)

2. After their two parents.] After the death of the father and mother: here the period of the distribution is shown. The sons.] The persons, who make the distribution, are hereby indicated. Equally.] A rule respecting the mode is by this declared: in equal shares only should they divide the effects and debts.

3. But Manu, having premised "partition after the death of the father and the mother" (5) and having declared, "The eldest

(1) Yájñavalkya, ii. 117.
(2) *Ibid*, ii. 117.
(3) Nárada, xiii. 16.
(4) Yájñavalkya, ii. 118.
(5) Manu, ix. 104.

(a) Unequal partition is now a thing of the past. The father cannot reserve two shares for himself at a partition, nor make a partition with deductions nor allow the eldest son a double share.

brother may take the patrimony entire, and the rest may live under him as under their father;" (1) has exhibited a distribution with deductions, among brothers separating after the death of their father and mother: "The portion deducted for the eldest is the twentieth part of the heritage with the best of all the chattels; for the middlemost, half of that; for the youngest, a quarter of it." (2) The twentieth part of the whole amount of the property [to be divided,] and the best of all the chattels, must be given [by way of deduction] to the eldest; half of that, or a fortieth part, and a middling chattel, should be allotted to the middlemost; and a quarter of it, or the eightieth part, with the worst chattel, to the youngest. He has also directed an unequal partition, but without deductions, among brothers separating after their parents' decease; allotting two shares to the eldest, one and a half to the next born, and one apiece to the younger brothers: "If a deduction be thus made, let equal shares of the residue be allotted: but, if there be no deduction, the shares must be distributed in this manner; let the eldest have double share, and the next born a share and a half, and the younger sons each a share: thus is the law settled." (3) The author himself has sanctioned an unequal distribution when a division is made during the father's life-time ("Let him either dismiss the eldest with the best share, &c." (4). Hence an unequal partition is admissible in every period. How then is a restriction introduced, requiring that sons should divide only equal shares?

4. Here we reply: True, this unequal partition is allowed by the sacred ordinances; but it must not be practised, because it is abhorred by the world; for that is forbidden by the maxim "Practise not that which is legal, but is abhorred by the world, [for] it secures not celestial bliss:" (5) as the practice [of offering bulls] is shunned, on account of popular prejudice, notwithstanding the injunction "Offer to a venerable priest a bull or a large goat;" (6) and as the slaying of a cow is for the same reason not in vogue, notwitstanding the precept "Slay a barren cow as a victim consecrated to Mitra and Varuṇa." (7)

5. It is expressly declared, "As the duty of an appointment [to raise up seed to another,] and as the slaying of a cow for a victim, are not in use, so is partition with deductions [in favour of elder brothers.]" ( )

6. Ápastamba also, having delivered his own opinion, "A father, making a partition in his life-time, should distribute the heritage equally among his sons;" (9) and having propounded, as the doctrine of some, the eldest son's succession to the whole estate ("Some hold, that the eldest is heir;") (10) and having exhibited, as

(1) Manu, ix. 105.
(2) *Ibid*, ix. 112.
(3) *Ibid*, ix. 116, 117.
(4) Yájñavalkya, ii. 115.
(5) Anonymous.
(6) Anonymous.
(7) *Ibid*.
(8) *Ibid*.
(9) Apastamba, ii. 6, 14—1.
(10) *Ibid*, ii. 6, 14—6.

the notion of others, a distribution with deductions, ("In some countries, the gold, the black kine, and the black produce of the earth, belong to the eldest son; the car appertains to the father; and the furniture in the house and her ornaments are the wife's; as also the property [received by her] from kinsmen: so some maintain;") (1) has expressly forbidden it as contrary to the law; and has himself rejected it as opposed to the sacred code: "It is recorded in scripture, without distinction, that Manu distributed his heritage among his sons." (2)

7. Therefore unequal partition, though spoken of in codes of law, should not be practised, since it is disapproved by the world and is contrary to scripture. For this reason, a restriction is ordained, that brothers should divide only in equal shares.

8. It has been declared, that sons may divide the effects after the death of their father and mother. The author states an exception in regard to the mother's property;

"*The daughters share the residue of their mother's property, after payment of her debts.*" (3)

9. Let the daughters divide their mother's effects remaining over and above the debts, that is, the residue after the discharge of the debts contracted by the mother. Hence, the purport of the preceding part of the text is, that sons may divide their mother's effects which are equal to her debts or less than their amount.

10. The meaning is this: A debt, incurred by the mother, must be discharged by her sons, not by her daughters; but her daughters shall take her property remaining above her debts: and this is proper; for by the maxim "A male child is procreated if the seed predominate, but a female if the woman contribute most to the fœtus;" the woman's property goes to her daughters, because particles of her body abound in her female children; and the father's estate goes to his sons, because particles of his body abound in his male children.

11. On the subject a special rule is propounded by Gautama: "A woman's property goes to her daughters, unmarried, or unprovided." (4) The meaning of this is this: if there be competition of married and unmarried daughters, the woman's separate property belongs to such of them as are unmarried; or, among the married, if there be competition of endowed and unendowed daughters, it belongs exclusively to such as are unendowed: 'Apratishthita' signifies 'destitute of wealth.'

12. In answer to the question, who takes the residue of the mother's property, after payment of her debts, if there be no daughter the author adds

"*And the issue succeeds in their default.*" (5)

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(1) Apastamba, ii. 6, 14. 7, 8, and 9.
(2) *Ibid*, ii. 6, 14. 11.
(3) Yájñavalkya, ii. 118.
(4) Gautama, xxviii. 24.
(5) Yájñavalkya, ii. 118.

13. On failure of daughters, that is, if there be none, the son, &c., shall take the property. This, which was propounded under the first part of the text "Let sons divide equally both the effects and the debts;"(1) is here expressly declared for the sake of greater perspicuity.

SECTION IV.

Effects not liable to partition.

1. The author says:—

"Whatever is acquired by the co-parcener himself, without detriment to the father's estate, as a present from a friend, or a gift at nuptials, does not appertain to the co-heirs. Nor shall he, who recovers hereditary property, which had been taken away, give it up to the parceners: nor what has been gained by learning."(2)

2. That, which had been acquired by the co-parcener himself without any detriment to the property of his father or mother, or which has been received by him from a friend, or obtained by marriage, shall not appertain to the co-heirs. Any property, which had descended in succession from ancestors and had been seized by others and remained unrecovered by the father and the rest through inability or from any other cause, he among the sons who recovers it with the acquiescence of the rest, shall not give up to the brothers or other co-heirs: the person recovering it shall take it.

3. If it be land, he takes the fourth part, and the remainder is equally shared among all the brothers. So Sankha ordains "Land, [descended] in regular succession, but which had been formerly lost and which a single [heir] did recover solely by his own labour, the rest may divide according to their due allotments, having first given him a fourth part."(3)

4. In regular succession.] Here the word "descended" must be understood.

5. He need not give to the co-heirs what has been gained by him by learning, by reading the scriptures or by expounding their meaning: the acquirer shall take such gains.

6. Here the phrase "anything acquired by himself, without detriment to the father's estate," must be everywhere understood: and it is thus connected with each member of the sentence; what is obtained from a friend, without detriment to the paternal estate; what is received in marriage without waste of the patrimony; what is recovered of the hereditary estate without expenditure of ancestral property; what is gained by learning without use of the father's property. Consequently, what is obtained from a friend as the return of an obligation conferred at the charge of the patri-

(1) Yájñavalkya, ii. 118.
(2) *Ibid*, ii. 119, 120.
(3) II. Cole. Dig., 464, ccclix.

mony, what is received at a marriage concluded in the form termed Ásura or the like, what is recovered, of the hereditary estate by the expenditure of the father's wealth, what is earned by learning acquired at the expense of ancestral wealth, all this must be shared with all the brothers and with the father.

7. Thus, since the phrase "without detriment to the father's estate" is in every place understood, what is obtained by simple acceptance, without waste of the patrimony, is not liable to partition. But, if that were not understood with every member of the text, presents from a friend, a dowry received at a marriage, and other particular acquisitions, need not have been specified.

8. But, it is alleged, the enumeration of amicable gifts and similar acquisitions is pertinent, as showing, that such gains are exempt from partition, though obtained at the expense of the patrimony. Were it so, this would be inconsistent with the received practice of unerring persons and would contradict a passage of Nárada in respect of the gains of learning: "He who maintains the family of a brother engaged in acquiring learning, shall take, be he ever so ignorant, a share of the wealth gained by learning so acquired."(1) Moreover the definition of wealth, not partible, which is gained by learning, is so propounded by Kátyáyana: "Wealth, gained by learning which was acquired from a stranger while receiving a foreign maintenance, is termed acquisition by learning."(2)

9. Thus, if the phrase "without detriment to the father's estate," be taken as a separate sentence, anything obtained by mere acceptance would be exempt from partition, a result contrary to established practice.

10. This [condition, that the acquisition should be without detriment to the patrimony,] is made clear by Manu: "What a brother has acquired by his labour, without using the patrimony, he need not give up to the co-heirs: nor what has been gained by learning."(3)

11. By labour, by learning, war or the like.

12. Is it not unnecessary to declare that effects obtained as presents from friends, and other similar acquisitions made without using the patrimony, are exempt from partition since there was no ground for supposing they are partible? That what is acquired, belongs to the acquirer, and to no other person, is well known: but a denial implies the possibility of the contrary.

13. Here a certain writer thus states the grounds for supposing a partition. By interpreting the text, "After the death of the father, if the eldest brother acquire any wealth, a share of that belongs to the younger brothers; provided they have duly cultiva-

(1) Nárada, xiii. 10.
(2) II. Cole. Dig., 444, cccxlvii.
(3) Manu ix. 208.

ted science;" (1) in this manner, 'if the eldest, youngest or middlemost, acquire property before or after the death of the father, a share shall accrue to the rest, whether younger or elder;' grounds do exist for supposing friendly presents and the like to be liable to partition, whether or not the father be living: that is accordingly denied.

14. The argument is erroneous: since there is not here a denial of what might be supposed; but the text is a recital of that which was demonstratively true: for most texts, cited under this head, are mere recitals of that which is well-known to the world.

15. Or you (the objector) may be satisfied with considering it as an exception to what is suggested by another passage. "All the brothers shall be equal sharers of that which is acquired by them in concert:" (2) and it is therefore a mere error to deduce the suggestion from an indefinite import of the word "eldest" in the text before cited (§ 13). That passage must be interpreted as an exception to the general doctrine, deduced from texts concerning friendly gifts and the rest, that they are exempt from partition, both before the father's death and after it.

16. Similarly, other things exempt from partition, have been enumerated by Manu; "Clothes, vehicles, ornaments, prepared food, women, sacrifices and pious acts, as well as the common way, are declared not liable to partition." (3)

17. Only clothes which have been worn, must not be divided. What is used by each person belongs exclusively to him; and what had been worn by the father must be given by brothers, dividing after the father's decease, to the person who partakes of food at his obsequies as directed by Brihaspati; "The clothes and ornaments, the bed and similar furniture, appertaining to the father, as well as his vehicle and the like, should be given, after adorning them with perfumes and wreaths of flowers, to the person who feeds at the srâddha." (4) But new clothes are subject to partition.

18. Vehicles] The carriages, as horses, palanquin or the like. Here also, that on which each person rides, belongs exclusively to him. But the father's must be disposed of like his clothes. If the horses or the like be numerous, they must be distributed among co-heirs who live by the sale of them. If they cannot be divided, the number being unequal,(a) they belong to the eldest brother: as ordained by Manu; "Let them never divide a single goat or sheep, or a single beast with uncloven hoofs: a single goat or sheep belongs to the eldest." (5)

19. The ornaments worn by each person are exlusively his.

(1) Manu, ix. 204.
(2) Brihaspati, xxv. 14.
(3) Manu, ix. 219.
(4) Brihaspati xxv. 85.
(5) Manu, ix. 119.

(a) The number being unequal. This is a rather queer expression for "the number being such as could not be equally divided among the sharers."

But what has not been used is common and liable to partition. "Such ornaments as are worn by a woman during the life-time of her husband, the heirs of the husband shall not divide among themselves: they that do so, are degraded."(1) It appears from the condition here specified ("such ornaments as are worn,") that those which are not worn may be divided.

20. Prepared food, as boiled rice, sweet cakes and the like, must be similarly exempted from partition. Such food is to be consumed according to circumstances.

21. Water, or a reservoir of it, as a well or the like, not being divisible must not be distributed according to its money-value; but is to be used [by the co-heirs] by turns.

22. The women or female slaves, being unequal [in number, to the shares,] must not be divided according to their value, but should be employed [for the co-heirs] alternately. But women (adulteresses or others) kept in concubinage by the father, must not be shared by the sons, though equal in number: for the text of Gautama forbids it. "No partition is allowed in the case of women connected [with the father or with one of the co-heirs.]" (2)

23. The term *yoga-kshema* is a compound of *yoga* and *kshema*. By the word *yoga* is signified a cause of obtaining something not already obtained: that is, a sacrificial act to be performed with fire consecrated according to the Veda and the Smritis. By the term *kshema* is denoted an auspicious act which becomes the means of conservation of what has been obtained: such as the making of a pool or a garden, or the giving of alms elsewhere than at the altar. Both these, though appertaining to the father, or though accomplished at the charge of the patrimony, are indivisible as Laugàkshi declares. "The learned have named a conservatory act *kshema*, and a sacrificial one *yoga*; both are pronounced indivisible: and so are the bed and the chair."

24. Some hold that by the compound term *yoga-kshema*, those who effect sacrificial and conservatory acts (*yoga* and *kshema*), are intended, as the king's counsellors, the stipendiary priests, and the rest. Others say that weapons, cow-tails, umbrellas, shoes and similar things are meant.

25. The common way, or road of ingress and egress to and from the house, garden, or the like, is also indivisible.

26. The exclusion of land from partition, as stated by Usanas, ("Sacrificial gains, land, written documents, prepared food, water, and women, are indivisible among kinsmen even to the thousandth degree;") has reference to sons of a Bráhmin by women of the military and other inferior classes: for it is ordained [by Brihaspati:] "Land, obtained by acceptance of donation, must not be given to the son of a Kshatriyá or other wife of inferior class: even though

(1) Manu, ix. 200.

(2) Gautama, xxviii. 47.

his father give it to him, the son of the Bráhmaní may resume it, when his father is dead.'(1)

27. Sacrificial gains] acquired by officiating at religious ceremonies.

28. What is obtained through the father's favour will be subsequently declared exempt from partition. The supposition that anything, acquired by transgressing restrictions regarding the mode of acquisition, is indivisible, has been already refuted.

29. It is settled that whatever is acquired at the charge of the patrimony is subject to partition. But the acquirer shall, in such a case, have a double share according to the text of Vasishtha. "He, among them, who has made an acquisition, may take a double portion of it."(2)

30. The author propounds an exception to that maxim.

"*But, if the common stock be improved, an equal division is ordained.*"(3)

31. Among unseparated brothers if the common stock be improved or augmented by any one of them by agriculture, commerce or similar means, an equal distribution nevertheless takes place; and a double share is not allotted to the acquirer.

SECTION V.

Equal rights of father and son in property ancestral.

1. The distribution of the paternal estate among sons has been shown; the author next propounds a special rule concerning the division of the grandfather's effects by grandsons.

"*But among grandsons by different fathers, the allotment of shares is according to the fathers.*"(4)

2. Although grandsons have by birth a right in the grandfather's estate equally with sons, still the distribution of the grandfather's property must be adjusted through their fathers and not with reference to themselves. The meaning here expressed is this: if unseparated brothers die leaving male issue and the number of sons be unequal, one having two sons, another three, and a third four, the two receive a single share in right of their father, the other three take one share appertaining to their father, and the remaining four similarly obtain one share due to their father. So, if some of the sons be living and some have died leaving male issue, the same rule should be observed: the surviving sons take their own allotments, and the sons of their deceased brothers receive the shares of their own fathers respectively. Such is the adjustment prescribed by the text.

(1) Brihaspati, xxv. 30.
(2) Vasishtha, xvii. 42.
(3) Yájnavalkya ii. 121.
(4) *Ibid*, ii. 121.

3. If the father be alive and separate from the grandfather, or if he have no brothers, a partition of the grandfather's estate with the grandson would not take place since it has been directed that shares shall be allotted in right of the father, if he be deceased: or, admitting partition to take place, it would be made according to the pleasure of the father, like a distribution of his own acquisitions: to obviate this doubt the author says:—

"*It is well known that the ownership of father and son is the same in land which was acquired by the grandfather, or in a corrody or in chattels [which belonged to him.*"](1)

4. Land] a rice-field or other ground. A corrody.] So many leaves receivable from a plantation of betel, pepper, or so many nuts from an orchard of areca. Chattels] gold, silver, or other moveables.

5. In such property, which was acquired by the paternal grandfather through acceptance of gifts, or by conquest or other means [as commerce, agriculture, or service,] the ownership of father and son is well-known: and therefore partition does take place. As the right is equal or alike therefore partition is not restricted to be made by the father's choice; nor has he a double share.

6. Hence also it is ordained by the preceding text, that "the allotment of shares shall be according to the fathers," (§ 1.) although the right be equal.

7. The first text "When the father makes a partition, &c." (Sect. 2. § 1.) relates to property acquired by the father himself. So does that which ordains a double share: "Let the father, making a partition, reserve two shares for himself,"(2) The dependence of sons, as affirmed in the following passage, "While both parents live, their control remains, even though they have arrived at old age;"(3) must relate to effects acquired by the father or mother. This other passage, "They have not power over it (the paternal estate) while their parents live;"(4) must also be referred to the same subject.

8. Thus, though the mother is capable of bearing more sons, and the father retains his worldly affections and does not desire partition, a division of the grandfather's estate does nevertheless take place at the will of the son.

9. So, likewise, the grandson has a right of prohibition, if his unseparated father is making a gift, or a sale, of effects inherited from the grandfather: but he has no right of interference himself if the effects were acquired by the father; on the contrary, he must acquiesce, because he is dependent.

10. Consequently the difference is this: although he have

(1) Yájñavalkya, ii. 122.
(2) Nárada, xiii. 12
(3) Ascribed to Manu, but not found in his Institutes.
(4) Manu, ix. 104.

right by birth in his father's and in his grandfather's property, still, since he is dependent on his father in regard to the paternal estate, and since the father has a predominant interest as it was acquired by himself, the son must acquiesce in the father's disposal of his self-acquired property ; but since both have equally a right in the grandfather's estate, the son has a power of interdiction [if the father be dissipating the property.](a)

11. Manu likewise shows, that the father, however reluctant, must divide with his sons, at their pleasure, the effects acquired by the paternal grandfather, declaring as he does, " If the father recover paternal wealth not recovered by his co-heirs, he shall not, unless willing, share it with his sons ; for in fact it was acquired by him,"(1) that, if the father recover property which had been acquired by the grandfather and taken away by a stranger but not recovered by the grandfather, he need not himself share it, against his inclination, with his sons ; any more than he need divide his own acquisitions.

SECTION VI.

Rights of a posthumous son and of one born after partition.

1. How shall a share be allotted to a son born subsequently to a partition of the estate ? The author replies.

" *When the sons have been separated ; one who is* [*afterwards*] *born of a woman equal in class, gets a share.*(2)

2. The sons being separated from their father, one who shall be afterwards born of a wife equal in class, shall share the distribution. What is distributed, is distribution, meaning the allotments of the father and mother : he shares that ; in other words, he obtains after [the death of] his parents, both their portions : his mother's portion, however, only if there be no daughter ; for it is declared that " Daughters share the residue of their mother's property, (after payment of her debts.)"(3)

3. But a son by a woman of a different caste, receives merely his own proper share, from his father's estate ; but the whole of his mother's property.

4. The same is expressed by Manu : " A son, born after a division, shall alone take the parental wealth."(4) The term parental (pitryam) must be here interpreted ' appertaining to both father and mother :' for it is ordained, that " A son, born before partition,

(1) Manu, ii. 209.
(2) Yájñavalkya, ii. 123.
(3) Yájñavalkya, ii. 118.
(4) Manu, ix. 216.

(a) The son's right to demand partition of the ancestral property in the hands of his father is well established. See *Nagalinga* v. *Subbiramanya* (1, M. H. C. R. 77) ; *Jogul Kishore* v. *Shib Sahai* (I. L. R. 5 A. 430) ; *Jugmohundas* v. *Mangaldas* (I. L. R. 10 B 529) ; and in *Laljeet* v. *Rajcoomar* (12 B L.R. 373).

has no claim on the wealth of his parents; nor one begotten after it, on that of his brother." (1)

5. The meaning of the text is this: one, born previously to the distribution of the estate, has no property in the share allotted to his father and mother who are separated [from their elder children]; nor is one, born of parents separated [from their children], a proprietor of his brother's allotment.

6. Thus, whatever has been acquired by the father in the period subsequent to partition, belongs entirely to the son born after separation. For it is so ordained: "All the wealth, which is acquired by the father himself, who has made a partition with his sons, goes to the son begotten by him after the partition: those, born before it, are declared to have no right." (2)

7. But the son, born subsequently to the separation, must, after the death of his father, share the wealth with those who reunited themselves with the father after partition as directed by Manu; "Or he shall participate with such of the brothers as are reunited with the father." (3)

8. When brothers have made a partition subsequently to their father's death, how shall a share be allotted to a son born afterwards? The author replies.

"*His allotment must absolutely be made out of the visible estate corrected for income and expenditure.*" (4)

9. A share allotted to one who is born after partition of the brothers, which took place subsequently to the death of the father, at a time when the mother's pregnancy was not manifest, is "his allotment." But whence shall it be taken? The author replies, "from the visible estate" received by the brothers, "corrected for income and expenditure." Income is the daily, monthly or annual produce. Liquidation of the debts contracted by the father, is expenditure. Out of the amount of property corrected by allowing for both income and expenditure, a share should be taken and allotted to the [posthumous son.]

10. The meaning here expressed is this: Adding to the several shares the income that had thence accrued and subtracting the father's debts, a small part should be taken from the remainder of the shares respectively, and an allotment, equal to their own portions, should be thus formed for the [posthumous] son, born after partition.

11. This must be understood to be likewise applicable in the case of a nephew, who is born after the separation of the brothers; the pregnancy of the brother's widow, who was yet childless, not having been manifest at the time of the partition.

12. But, if she were evidently pregnant, the distribution

(1) Brihaspati, xxv. 18.
(2) *Ibid*, xxv. 19.
(3) Manu, ix. 216.
(4) Yájñavalkya, ii. 123.

should be made, after awaiting her delivery as Vasishṭha directs, "Partition of heritage [takes place] among brothers [having waited] until the delivery of such of the women, as are childless [but pregnant]."(1) This text should be interpreted, 'having waited until the delivery of the women who are pregnant.'

13. It has been stated, that the son, born after partition, takes the whole of his father's wealth and of his mother's. But if the father or the mother affectionately bestow ornaments or other presents on a separated son, that gift must not be impeached by the son born after partition; or, if actually given, must not be resumed. So the author declares:

"*But effects, which have been given by the father, or by the mother, belong to him on whom they were bestowed.*"(2)

14. What is given (whether ornaments or other effects,) by the father and by the mother, being separated from their children, to a son already separated, belongs exclusively to him and does not become the property of the son born after partition.

15. By parity of reason, what was given to any one before the separation, appertains solely to him.

16. So, among brothers, dividing the allotment of their parents who were separated from them, after the death of those parents, (as may be done by the brothers if there be no son born subsequently to the original partition,) what had been given by the father and mother to each of them belongs severally to each and is shared by no other. Thus should it be understood.

SECTION VII.

Shares allotted to provide for widows and for the nuptials of unmarried daughters.—The initiation of uninitiated brothers defrayed out of the joint funds.

1. When a distribution is made during the life-time of the father, the participation of his wives, equally with his sons, has been directed. ("If he make the allotments equal, his wives must be rendered partakers of like portions.") The author now proceeds to declare their equal participation, when partition takes place after the demise of the father:

"*Of heirs dividing after the death of the father, let the mother also take an equal share.*" (3)(a)

(1) Vasishtha, xvii. 41. (2) Yájñavalkya, ii. 124. (3) Yájñavalkya, ii. 124.

(a) The right of a mother to share at a partition made by her sons is not recognized in Madras. See *Venkatammal* v. *Andyappa* (I. L. R. 6 M. 130). The practice in Bombay appears to be the same as that in Madras *i.e.* to allot to the mother a portion for her maintenance, though *Lakshman* v. *Satyabhama Bai* (I. L. R. 2 B. 494) supports a mother's right to a share equal to that of a son. Her right to share is recognized in Bengal and Allahabad; see *Kishore* v. *Moni Mohun* (I. L. R. 12 C 165); *Bilaso* v. *Dina Nath* (I. L. R. 3 A. 88).

2. Of heirs making a partition after the decease of the father, the mother shall take a share equal to that of her son; provided no stridhana had been given to her. But, if any had been received by her, she is entitled to half a share, as will be explained.

3. If any of the brothers be uninitiated when the father dies, who is competent to complete their initiation? The author replies:

"*Uninitiated brothers should be initiated by those for whom the ceremonies have been already completed.*"(1)

4. By the brothers who make a partition after the decease of their father, the uninitiated brothers should be initiated at the charge of the whole estate.

5. In regard to unmarried sisters, the author states a different rule:

"*But sisters should be disposed of in marriage, giving them as an allotment, the fourth part of a brother's own share.*"(2) (*a*)

6. The purport of the passage is this: Sisters also who are not already married must be disposed of, in marriage, by the brothers, How? by contributing a fourth part out of their own allotments. Hence it appears that daughters also participate after the death of their father. Here, in saying "of a brother's own share," the meaning is not that a fourth part shall be deducted out of the portions allotted to each brother and shall be so contributed, but that the unmarried daughter shall be allowed to participate for a quarter of such a share as would be assignable to a brother of the same rank with herself. The sense expressed is this: if the maiden be daughter of a Bráhmaṇi, she has a quarter of so much as is the amount of an allotment for a son by a Brahmaṇi wife.

7. For example, if a certain person had only a Bráhmaṇí wife, and leaves one son and one daughter, the whole paternal estate should be divided into two parts, and one of such parts be sub-divided into four; and, one of these four parts being given to the unmarried daughter the remainder shall be taken by the son. Or, if there be two sons and one daughter, the whole of the father's estate should be divided into three parts and one such part be subdivided into four: and, one of these four parts having been given to the unmarried daughter the remainder shall be shared by the sons. But, if there be one son and two daughters, the father's property should be divided into three parts and two shares be severally sub-divided into quarters: then, having given two [quarter] shares to the unmarried daughter the son shall take the whole of the residue. It must be similarly understood in any case of an equal or unequal number of brothers and sisters alike in rank.

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(1) Yájñavalkya, ii. 125. (2) Yájñavalkya, ii. 125.

(*a*) Sisters are not entitled in any presidency to share at a partition among brothers. They should be married if not already married.

8. But, if there be one son of a Bráhmaṇí wife and one daughter by a Kshatriyá woman, the paternal estate should be divided into seven parts; and the three parts, which would be assignable to the son of a Kshatriyá woman, must be sub-divided into four parts then, giving such fourth part to the daughter of the Kshatriyá wife: the son of the Bráhmaṇí shall take the residue. Or, if there be two sons of the Bráhmaṇí and one daughter by the Kshatriyá wife, the father's estate shall be divided into eleven parts; and three parts, which would be assignable to a son by a Kshatriyá wife, must be sub-divided into four parts having given a quarter share to the daughter of the Kshatriyá, the two sons of the Bráhmaṇí shall share and take the whole of the remainder. Thus the mode of distribution may be inferred in any instance of an equal or unequal number of brothers and sisters dissimilar in rank.

9. Nor is it right to interpret the terms of the text ("giving the fourth part" § 5) as signifying 'giving money sufficient for her marriage,' by considering the word "fourth" as indefinite. For that contradicts the text of Manu, "To the maiden sisters, let their brothers give portions out of their own allotments respectively: to each the fourth part of the appropriate share; and they who refuse to give it, shall be degraded."(1)

10. The sense of this passage is as follows. Brothers of the Bráhmin and other castes should give to their sisters belonging to the same caste portions out of their own allotments; that is, out of the shares ordained for persons of their own rank, as subsequently explained. They should give to each sister a quarter of their own respective allotments. It is not meant, that a quarter should be deducted from the share of each and be given to the sister. But, to each maiden, should be severally allotted the quarter of a share ordained for a son of the same class. The mode of adjusting the division, when the rank is dissimilar and the number unequal, has been stated: and the allotment of such a share appears to be indispensably requisite, since the refusal of it is pronounced to be a sin; "They, who refuse to give it, shall be degraded." (§ 9.)

11. If it be alleged that here also the mention of a quarter is indeterminate and the allotment of property sufficient to defray the expenses of the nuptials is all that is meant to be laid down: (the answer is) no; for there is not any proof that the allotment of a quarter of a share is indefinite in both codes and the withholding of it is pronounced to be a sin.

12. As for what is stated by some, that a sister who has many brothers would be greatly enriched, if the allotment of a [fourth] part were imperatively commanded and that a brother who has many sisters would be entirely deprived of wealth, the consequence is obviated by the adjustment already explained: it is not here directed that a quarter shall be deducted out of the

(1) Manu, ix. 118.

brother's own share and given to his sister when alone any such consequence could arise.

13. Hence the interpretation of Medhátithi as well as of other writers who concur with us is square and accurate; not that of Bháruchi.

14. Therefore, after the death of the father, an unmarried daughter participates in the inheritance. But before his death she obtains that only whatever it be, which her father gives since there is no special precept respecting this case. Thus all is unexceptionable.

SECTION VIII.

Shares of sons belonging to different castes.

1. The adjustment of a distribution among brothers alike in rank, whether made with each other, or with their father, has been explained ("When the father makes a partition, &c."). The author now states the mode of partition among brothers dissimilar in class:

"*The sons of a Bráhmaṇa, in the several castes, have four shares, or three, or two, or one; the children of a Kshatriyá have three portions, or two, or one; and those of a Vaisyá take two parts, or one.*"(1) (*a*)

2. Under the sanction of the law,(2) instances do occur of a Bráhmaṇa having four wives; a Kshatriyá, three; and a Vasiyá, two: but a Súdrá, one. In such cases, the sons of a Bráhmaṇa, born to him by women of the several castes shall have four shares, three, two, or one, in the order of these castes.

3. The several castes (varṇa.)] Women of the different classes, the Bráhmin and the rest, are here signified by the word castes (varṇa.) The termination *as*, sub-joined to a noun in the singular number and locative or other case, bears a distributive sense conformably with the grammatical rule.

4. The meaning here expressed is this: The sons of a Bráhmaṇa by a Bráhmaṇí woman take four shares apiece: his sons by a Kshatriyá wife receive three shares each; by a Vaisyá woman, two; by a Súdrá, one.

5. The sons of a Kshatriyá, born to him by women of the several castes, (for that is here understood) have three shares, or two, or one, in the order of the castes: that is, the sons of a Kshatriyá man, by a Kshatriyá woman, take three shares each; by a Vaisyá woman, two; by a Súdrá woman, one.

6. The sons of a Vaisyá, by women of the several castes. (for here, again, the same term is understood,) have two shares, or one,

(1) Yájñavalkya, ii, 126. (2) Yájñavalkya, i. 57.

(*a*) This rule is now of little practical importance as intermarriages among different castes are obsolete in this age and as there is therefore no possibility of a man having sons born of wives of different castes.

in the order of the classes: that is, the sons of a Vaisyá man, by a Vaisyá woman, take two shares apiece; by a Súdrá woman, one.

7. Since a man of the servile caste cannot have a son of different class from his own, because one wife only is allowed to him, (for "a Súdrá woman only must be the wife of a Súdrá man;"(1) partition among his children takes place in the manner before-mentioned.

8. Although no restriction be specified in the text (§ I.), it must be understood to relate to property other than land obtained by the acceptance of a gift. For it is declared [by Brihaspati] "Land obtained by acceptance of gift must not be given to the son of a Kshatriyá or other wife of inferior caste: even though his father give it to him, the son of the Bráhmaṇí may resume it, when his father is dead.,' (2)

9. Since acceptance of gift is here expressly stated, land obtained by purchase or similar means appertains also to the son of a Kshatriyá or other inferior woman; for the son by a Súdrá woman is specially excepted ("The son, begotten on a Súdrá woman by any man of a twice-born class, is not entitled to a share of land." (3) Now, if land acquired by purchase and similar means did not belong to the sons of a Kshatriyá or Vaisyá wife, the special exclusion of a son by a Súdrá woman would be unnecessary.

10. But the text, "The son of a Bráhmaṇa, a Kshatriyá, or a Vaisyá by a woman of the servile class shall not share the inheritance; whatever his father may give him, let that only be his property,"(4) relates to the case where something, however inconsiderable, has been given by the father, in his life-time, to his son by a Súdrá woman. But, if no affectionate gift have been bestowed on him by his father, he participates for a single share [of the moveables]. Thus there is nothing inconsistent.

SECTION IX.

Distribution of effects discovered after partition.

1. Something is here added respecting the residue left after a general partition of the estate.

"*Effects, which have been withheld by one co-heir from another, and which are discovered after the separation, let them again divide in equal shares: this is a settled rule.*"(5) (*a*)

2. What had been withheld by co-parceners from each other,

(1) Manu, iii. 13.
(2) Brihaspati, xxv. 30.
(3) *Ibid*, xxv. 32.
(4) Manu, ix. 155.
(5) Yájñavalkya, ii. 127.

(*a*) The property discovered will be divided among the parties to the first partition or their representatives in interest. *Luchman* v. *Sanwal* (I.L.R. 1 A. 543.)

and was not known at the time of dividing the aggregate estate, they shall divide in equal proportions, when it is discovered after the partition of the patrimony. Such is the settled rule of law.

3. Here, by saying "in equal shares" the author forbids partition with deductions. By saying "let them divide," he shows, that the wealth shall not be taken exclusively by the person who discovers them.

4. Since the text is thus understood it does not imply, that no offence is committed by embezzling the common property.

5. Is it shown by Manu to be an offence on the part of eldest brother to appropriate to himself the common property; but not so, on the part of younger brothers? "An eldest brother, who from avarice shall defraud his younger brothers, shall forfeit the honours of his primogeniture, be deprived of his [additional] share, and be punished by the king." (1)

6. That inference is notcorrect; for, by pronouncing such conduct criminal in the eldest brother who is independent and represents the father, it is more assuredly shown (by the analogy of the loaf and staff)(a) to be criminal in younger brothers, who are subject to the control of the eldest and hold the place of sons. Accordingly it is declared [by Gautama] to be an offence without exception or distinction: "Him, indeed, who deprives an heir of his right share, he does certainly destroy; or, if he destroy not him, destroys his son, or else his grandson."

7. Whoever debars, or excludes, from participation, an heir, *i.e.*, a person entitled to a share and does not give up to him his due allotment; he, being thus debarred of his share, destroys or annihilates that person who so debars him of his right: or, if he do not destroy him, he destroys his son or his grandson.

8. It is thus pronounced to be criminal in any person to withhold common property, without any distinction of eldest [or youngest.]

9. The view, that blame is not incurred by one who takes the wealth thinking that his own under the notion that the common property appertains also to him is incorrect.

10. He does incur blame: for, though he took it thinking it his own, still he has taken the property of another person, contrary to the injunction which forbids his so doing.

11. As in answer to a proposed solution of the difficulty: "If an oblation of green kidney beans be not practicable, and black kidney beans be used in their stead, by reason of the resemblance, the maxim which prohibits the employment of these in sacrifices,

(1) Manu, ix. 213.

(a) The analogy of the staff and the loaf; a person who carries away a staff necessarily carries away with it the loaf which is attached to the staff. The expression therefore means '*necessarily*; or *a fortiori*.' This expression is used in the same sense in other legal treatises.

is not applicable, because they were used by mistake for ground particles of green kidney beans;" it is maintained as the right opinion, that, 'although the ground particles of green kidney beans be taken as being unforbidden, still the ground particles of black kidney beans are also actually employed: and the prohibitory command is consequently applicable in this case.' (*a*)

12. Therefore it is established, both by the letter of the law and by reasoning, that an offence is committed by taking common property.

SECTION X.

Rights of the Dvyámushyáyana or son of two fathers.

1. Intending to lay down a special allotment for the Dvyámushyáyana (the son of two fathers,) the author previously defines that relation.

"*A son, begotten by one, who has no male issue, on the wife of another man, under a legal appointment, is the legal heir, and giver of funeral oblations to both fathers.*(1)

2. A son, procreated by the husband's brother or other person (having no male issue), on the wife of another man, with authority from venerable persons, in the manner before ordained, is heir of both the natural father and the wife's husband: he is successor to their estates, and giver of oblations to them, according to law.

3. The meaning of this is as follows. If the husband's brother or other person, duly authorized, and being himself destitute of male issue, have intercourse with the wife of a childless man, for the sake of raising issue both for himself and for the other, the son, whom he so begets, is the child of two fathers and denominated Dvyámushyáyana. He is heir to both and offers funeral oblations to their manes.

4. But if one, who has male issue, being so authorized, have intercourse with the wife of another for the sake of raising up issue to her husband only; the child, so begotten by him, is son of the husband, not of the natural father: and, by this restriction, he is not heir of his natural father, nor qualified to present funeral oblations to his manes. It is so declared by Manu: "The owners of the seed and of the soil may be considered as joint owners of the crop, which they agree, by special compact, in consideration of the seed, to divide between them." (2)

5. By special compact.] When the field is delivered by the

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(1) Yájñavalkya, ii. 128. (2) Manu, ix 53.

(*a*) The black kidney beans, &c. When the use of black kidney beans is expressly forbidden, their use as substitutes for green kidney beans is also forbidden. It cannot be argued that, as they are used *for* the green ones whose use is allowed and not as *black kidney beans*, such use is not forbidden. This reasoning is found in Mimamsa, VI-iii-6.

owner of the soil to the owner of the seed, on an agreement in this form, "let the crop, which will be here produced, belong to us both;" then the owners both of the soil and of the seed are considered by great sages as sharers or proprietors of the crop produced in the ground.

6. So [the same author.] "Unless there be a special agreement between the owners of the soil and of the seed, the fruit belongs clearly to the owner of the soil; for the soil is more important than the seed."(1)

7. But produce, raised in another's ground, without stipulating for the crop, or without a special agreement that it shall belong to both, appertains to the owner of the ground: for the receptacle is more important than the seed, as is observed in the case of cows, mares and the rest.

8. Here, however, the commission for raising up issue is relative to a woman who was only betrothed, since any such other appointment is forbidden by Manu. For, after thus premising a commission: "On failure of issue, the desired offspring may be procreated, either by his brother or some other kinsman, on the wife who has been duly authorized: anointed with liquid butter, silent, in the night, let the kinsman thus appointed, beget one son, but a second by no means, on the widow [or childless wife;]" (2) Manu has himself prohibited the practice: "By regenerate men, no widow must be authorized to conceive by any other: for they, who authorize her to conceive by any other, violate the primeval law. Such a commission is nowhere mentioned in the nuptial prayers; nor is the marriage of widows noticed in laws concerning wedlock. This practice, fit only for cattle, reprehended by learned priests, was introduced among men, while Vena had sovereign sway. He, sovereign of the whole earth, and therefore eminent among royal saints, gave rise to a reprehensible intermixture of castes, when his intellect was overcome by passion. Since that time, the virtuous censure that man, who, through delusion of mind, authorizes a widow to have intercourse for the sake of progeny." (3)

9. Nor is an option to be assumed from the [enunciation of both] precept and prohibition,(a) since they, who authorize the practice, are expressly censured and unchastity is strongly reprobated in speaking of the duties of women and continence is praised. This, Manu has shown: "Let the faithful wife considerably emaciate her body by living on pure flowers, roots, and fruits; but let her not, when her lord is deceased, even pronounce the name of another man." After prohibiting her recourse to another for the sake of livelihood, the author adds. Let her continue till death forgiving all injuries, performing harsh duties, avoiding every sen-

(1) Manu, ix. 52.
(2) Manu, ix. 59—60.
(3) Manu, ix. 64—68.

(a) An option arises where there is a positive command and a prohibition of equal weight in the same subject matter.

sual pleasure, and cheerfully practising the incomparable rules of virtue which have been followed by such women as were devoted to only one husband. Many thousands of Bráhmaṇas, having avoided sensuality from their early youth, and having left no issue in their families, have ascended nevertheless to heaven; and, like those abstemious men, a virtuous wife ascends to heaven, though she have no child, if, after the decease of her lord, she devote herself to pious austerity; but a widow, who, from a wish to bear children, slights her deceased husband and brings disgrace on herself here below, shall be excluded from the abode of her lord.(1) Thus Manu has forbidden the recourse of a widow or wife to another man, even for the sake of progeny. Therefore it is not right to deduce an option from the injunction contrasted with the prohibition.

10. The authorizing of a woman sanctified by marriage, [to raise up issue to her husband by another man,] being thus prohibited, what then is a lawful commission [to raise up issue?] The same author explains it: "The damsel, whose husband shall die after troth verbally plighted, his brother shall take in marriage according to this rule: having espoused her in due form, she being clad in a white robe, and pure in her conduct, let him privately approach her once in each period until issue be had." (2)

11. It appears from this passage, that he, to whom a damsel was verbally given, is her husband without a formal acceptance on his part. If he die, his own brother of the whole blood, whether elder or younger, shall espouse or take in marriage the widow. "In due form," or as directed by law, "having espoused" or wedded her, and "according to this rule," namely; with an inunction of ghee and with restraint of voice, &c., let him "privately" or in secret, "approach her, clad in a white robe, and pure in her conduct," that is, restraining her mind, speech and gesture, "once" at a period until pregnancy ensue.

12. These espousals are nominal, and a mere part of the form in which an authorized widow shall be approached like the inunction of ghee and so forth. They do not indicate her becoming the wedded wife of her brother-in-law.

13. Therefore the offspring, produced by that intercourse, appertains to the original husband, not to the brother-in-law. But, by special agreement, the issue may belong to both.

SECTION XI.

Sons by birth and by adoption.

1. A distribution of shares, among sons equal or unequal in class, has been explained. Next, in proceeding to show the rule of succession among sons principal and secondary, the author describes them.

(1) Manu, ix. 157—161. (2) Manu, ix. 69—70.

"The legitimate son is one procreated on the lawful wedded wife. Equal to him is the son of an appointed daughter. The son of the wife is one begotten on a wife by a sagotra of her husband, or by some other relative. One, secretly produced in the house, is a son of hidden origin. A damsel's child is one born of an unmarried woman: he is considered as son of his maternal grandsire. A child, begotten on a woman whose [first] marriage had not been consummated, or on one who had been deflowered [before marriage], is called the son of a twice-married woman. He whom his father or his mother gives for adoption shall be considered as a son given. A son bought is one who was sold by his father and mother. A son made is one adopted by a man himself. One, who gives himself, is self-given. A child accepted, while yet in the womb, is one received with a bride. He who is taken for adoption having been forsaken by his parents, is a deserted son." (1)

2. The issue of the breast (uras) is a legitimate son (aurasa). He is one born of a legal wife. A woman of equal caste, espoused in lawful wedlock, is a legal wife; and a son, begotten [by her husband] on her, is a true and legitimate son; and is chief in rank.(a)

3. The son of an appointed daughter (putrikâ-putra) is equal to him; that is equal to the legitimate son. The term signifies 'son of a daughter.' Accordingly he is equal to the legitimate son as described by Vasishṭha: "This damsel, who has no brother, I will give unto thee, decked with ornaments: the son who may be born of her shall be my son." (2); Or that term may signify a daughter becoming by special appointment a son. Still she is only similar to a legitimate son; for she derives more from the mother than from the father. Accordingly she is mentioned by Vasishṭha as a son, but as third in rank: "The appointed daughter is considered to *be the third class of sons.*" (3)

4. The son of two fathers (dvyámushyáyaṇa) is inferior to the natural father's legitimate son, because he is produced in another's soil.

5. A child, begotten by another person, namely, by a sagotra or by any other, is a wife's son (kshetraja).

6. The son of hidden origin (gúdhaja) is one secretly brought forth in the husband's house. By excluding the case of a child begotten by a man of inferior or superior caste, this must be restricted to an instance where it is not ascertained who is the father, but it is certain that he must belong to the same caste.

7. A damsel's child (kánina) is the offspring of an unmarried woman by a man of equal class (as restricted in the preceding instance): and he is the son of his maternal grandfather, provided she be unmarried and abide in her father's house. But, if she

(1) Yájñavalkya, ii. 129-133.
(2) Vasishṭha, xvii. 16.
(3) Vasishṭha, xvii. 14.

(a) Various readings as *sutah*, *matah* and *srutah* are found. But these do not affect the sense of the text.

be married, the child becomes the son of her husband. So Manu intimates : " A son, whom a damsel conceives secretly in the house of her father, is considered as the son of her husband, and denominated a damsel's son, as being born of an unmarried woman."(1)

8. The son of a woman twice-married is one begotten by a man of equal class, on a twice-married woman, whether the first marriage had or had not been consummated.

9. He, who is given by his mother with her husband's consent, while her husband is absent, [or incapable though present,] or [without his assent] after her husband's decease, or who is given by his father, or by both, being of the same class with the person to whom he is given, becomes his given son (dattaka.) So Manu declares : " He is called a son given (dattrima,) whom his father or mother affectionately give as a son, being alike [by class,] and in a time of distress, confirming the gift with water.(2)

10. By specifying distress, it is intimated, that the son should not be given unless there be distress. This prohibition regards the giver [not the taker.]

11. So an only son must not be given ; for, Vasishtha ordains, " Let no man give or accept an only son."(3)

12. Nor, though a numerous progeny exist, should an eldest son be given : for he chiefly fulfils the office of a son as is shown by the text ; " By the eldest son, as soon as born, a man becomes the father of male issue."(4)

13. The mode of accepting a son for adoption is propounded by Vasishtha : " A person, being about to adopt a son, should take an unremote kinsman or the near relation of a kinsman, having convened his kindred and announced his intention to the king, and having offered a burnt offering with recitation of the holy words, in the centre of his dwelling.(5)

14. An unremote kinsman.] Thus the adoption of one very distant by country and language, is forbidden.

15. The same [ceremonial of adoption] should be extended to the case of sons bought, self-given, and made [as well as that of a son deserted]: for parity of reasoning requires it.

16. The son bought (krita) is one who was sold by his father and mother, or by either of them: excepting as before an only son or an eldest one, and supposing distress and equality of caste. As for the text of Manu, " He is called a son bought, whom a man for the sake of having issue, purchases from his father and mother whether the child be equal or unequal to him," (6) it must be interpreted ' whether like or unlike in qualities ;' not in class : for the author concludes by saying :—

(1) Manu, ix. 172.
(2) *Ibid*, ix. 168.
(3) Vasishtha, xv. 3.
(4) Manu, ix. 106.
(5) Vasishtha, xv. 5.
(6) Manu, ix. 174.

"This law is propounded by me, in regard to sons equal by class."(1)

17. The son made (kritrima) is one adopted by the person himself who is desirous of male issue being enticed by the show of money and land and being an orphan without father or mother: for, if they be living, he is subject to their control.

18. The son self-given is one, who, being bereft of father and mother, or abandoned by them [without cause,] presents himself, saying, "Let me become thy son."

19. The son received with a bride, is a child who, being in the womb, is accepted when a pregnant bride is espoused. He becomes son of the bridegroom.

20. A son deserted (apaviddha) is one who, having been discarded by his father and mother, is adopted. He is the son of the taker. Here, as in every other instance, he must be of the same caste with the adoptive father.

21. Having premised sons chief and secondary, the author explains the order of their succession to the heritage:

Among these, the next in order is heir and presents funeral oblations on failure of the preceding.(2)

22. Of these twelve sons abovementioned, on failure of the first, respectively, the next in order, as enumerated, must be considered to be the giver of the funeral oblation or performer of obsequies, and taker of a share or successor to the effects.

23. If there be a legitimate son and an appointed daughter, Manu propounds an exception to the apparent right of the legitimate son to take the whole estate: "A daughter having been appointed, if a son be afterwards born, the division of the heritage must in that case be equal since there is no right of primogeniture for the woman."(3)

24. So the allotment of a quarter share to other inferior sons, when a superior one exists, has been ordained by Vasishṭha: "When a son has been adopted, if a legitimate son be afterwards born, the adopted son shares a fourth part."(4) Here the mention of a son given is intended for an indication of the son bought, son made by adoption, and [son self-given and] the rest: for they are equally adopted as sons intended for an indication of others also, as the son bought, son made by adoption, and the rest: for they are equally adopted as sons.

25. Accordingly Kátyáyana says, "But if a legitimate son be born, the rest are pronounced sharers of a fourth part, provided they belong to the same caste; but, if they be of a different class, they are entitled to food and raiment only." (5)

(1) Yájñavalkya, ii. 134.
(2) *Ibid*, ii. 133.
(3) Manu, ix. 134.
(4) Vasishtha, xv. 8
(5) II. Cole. Dig. 439. cccxxxvii.

26. "Those who belong to the same caste," as the son of the wife, the son given and the rest share a fourth part, if there be a true legitimate son: but those, who belong to a different class, as the damsel's son, the son of concealed origin, the son of a pregnant bride, and the son by a twice-married woman, do not take a fourth part, if there be a legitimate son: but they are entitled to food and raiment only.

27. "Exceptionable sons, as the son of an unmarried damsel, a son of concealed origin, one received with a bride, and a son by a twice-married woman, share neither the funeral oblation, nor the estate."(1) This passage of Vishnu merely denies the right of those sons to a quarter share, if there be legitimate issue; but, if there be no legitimate son or other preferable claimant, even the child of an unmarried woman and other secondary sons may succeed to the whole paternal estate, under the text before cited (§ 21.)

28. "The legitimate son is the sole heir of his father's estate; but, for the sake of charity he should give maintenance to the rest."(2) This text of Manu must be considered as applicable to a case, where the adopted and other sons are disobedient to the legitimate son and devoid of good qualities.

29. Here a special rule is propounded by the same author (Manu) respecting the son of the wife: "Let the legitimate son, when dividing the paternal heritage, give a sixth part, or a fifth, of the patrimony to the son of the wife."(3) The cases must be thus discriminated: if disobedience and want of good qualities be united, then a sixth part should be allotted. But, if one only of those defects exists, a fifth part.

30. Manu, having premised two sets of six sons, declares the first six to be heirs and kinsmen, and the last to be not heirs but kinsmen: "The true legitimate issue, the son of a wife, a son given, and one made by adoption, a son of concealed origin, and one rejected are the six heirs and kinsmen. The son of an unmarried woman, the son of a pregnant bride, a son bought, a son by a twice-married woman, a son self-given, and a son by a Súdrá woman, are six not heirs but kinsmen."(4)

31. That must be expounded as signifying that the first six may take the heritage of their father's sapiṇḍas and samánodakas if there be no nearer heir; but not so the last six. However, consanguinity and the performance of the duty of offering libations of water and so forth, on account of relationship near or remote, belong to both alike.

32 It must be so interpreted; for, the mention of a given son in the following passage is intended for any substituted son. "A given son must never claim the family and estate of his natural

(1) Not found in Vishnu's Institutes of the S. B. E. Series.
(2) Manu, ix. 163. (3) Manu, ix. 164. (4) Manu, ix. 159—160.

father. The funeral oblation follows the family and estate; but of him, who has given away his son, the obsequies fail."(1)

33. All, without exception, have a right of inheriting their father's estate, for want of a preferable son: since a subsequent passage ("Neither brothers, nor parents, but sons, are heirs to the estate of the father,") (2) purposely affirms the succession of all subsidiary sons other than the true legitimate issue; and the right of the legitimate son is propounded by a separate text (" The legitimate son is the sole heir of his father's estate;") and the word " heir " (dáyada) is well-known to be used to signify any successor other than a son.

34. The variation which occurs in the institutes of Vasishtha and the rest, respecting the rank of any son in either set, must be understood as founded on the difference of good and bad qualities.

35. But the assignment of the tenth place to the son of an appointed daughter, in Gautama's text, is relative to one differing in caste. Therefore it is settled that the every succeeding son takes the share in the absence of those previously mentioned.

36. The following passage of Manu: " If, among several brothers of the whole blood, one have a son born, Manu pronounces them all fathers of male issue by means of that son;"(3) is intended to forbid the adoption of others if a brother's son can possibly be adopted. It is not intended to declare him son of his uncle: for that is inconsistent with the subsequent text; " brothers likewise and their sons, gentiles, cognates, &c."(4)

37. The author next adds a restrictive clause by way of conclusion to what had been stated;

" *This law is propounded by me in regard to sons equal by class.*"(5)

38. The maxim is applicable to sons alike by class, not to such as differ in rank.

39. Here the damsel's son, the son of hidden origin, the son received with a bride, and a son by a twice-married woman, are deemed of like class, through their natural father, but not in their own characters: for it has been said that they are not within the definition of caste and class.

40. Since issue, procreated in the direct order of the castes, as the Múrdhávasikta and the rest, are comprehended under legitimate issue, it must be understood, that, on failure of even these, the right of inheritance devolves on the son of the wife and the rest.

41. But the son by a Súdrá wife, though legitimate, does not take the whole estate, even on failure of other issue. Then Manu

(1) Manu, ix 142.
(2) *Ibid*, ix. 185.
(3) *Ibid*, ix. 182.
(4) Yájñavalkya, ii. 136.
(5) *Ibid*, ii. 134.

says, "But, whether the man have sons, or have no sons, no more than a tenth part must be given to the son of the Súdrá."(1)

42. "Whether he have sons," whether he have male issue of a regenerate class; "or have no sons," or have no issue of such a class, in either case, upon his death the son of the wife or any other kinsman shall give to the Súdrá's son, no more than a tenth part of the father's estate.

43. Hence it appears, that the son of a Kshatriyá or Vaisyá wife takes the whole of the property on failure of issue by women of equal class.

SECTION XII.

Rights of a son by a female slave, in the case of a Súdrá's estate.

1. The author next delivers a special rule concerning the partition of a Súdrá's wealth.

Even a son begotten by a Súdrá on a female slave, may take a share by the father's choice. But, if the father be dead, the brethren should make him partaker of the moiety of a share: and one, who has no brothers, may inherit the whole property, in default of daughter's sons.(2)

2. The son, begotten by a Súdrá on a female slave, obtains a share by the father's choice, or at his pleasure. But, after the father if there be sons of a wedded wife, let these brothers allow the son, of the female slave to participate for half a share: that is, let them give him half of one son's allotment. However, should there be no sons of a wedded wife, the son of the female slave takes the whole estate, provided there be no daughters of a wife, nor sons of daughters.. But, if there be such, the son of the female slave participates for half a share only.(a)

3. From the mention of a Súdrá in this place, the son begotten by a man of a regenerate class on a female slave, does not obtain a share even by the father's choice, nor the whole estate after his death. But, if he be docile he receives only maintenance.

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(1) Manu, ix. 154.

(2) Yájñavalkya, ii. 134—135

(a) In the three regenerate classes, the illegitimate son has only a right of maintenance. Among Súdrás, he is, at his father's option, entitled to a share during his life. After the father's death he is entitled to share along with the legitimate sons, but gets only half of what he would get if he were a legitimate son. In the absence of heirs dowa to the daughter's son he succeeds to the whole of his father's estate. The Bombay High Court, however, has held in *Sadhu* v. *Baiza* (I. L. R., 4 B. 37 and 52), that the illegitimate son takes the whole estate even though the widow or the daughter be alive. The illegitimate son has no right of collateral succession and does not represent his father as coparcener in an undivided family or affect the rights of survivorship of the father's coparceners. *Krishna Iyer* v. *Moothoosawmy* (I. L. R., 7 M. 407); *Ranoji* v. *Khondoji* (I. L. R., 8 M. 557).

CHAPTER II.

SECTION 1.

Right of the widow to inherit the estate of one, who leaves no male issue.

1. That sons, principal and secondary, take the heritage, has been shown. The order of succession among all on failure of them, is next declared.

2. "*The wife, and the daughters also, both parents, brothers likewise, and their sons, gentiles, cognates, a pupil, and a fellow student: on failure of the first among these, the next in order is indeed heir to the estate of one who departed for heaven leaving no male issue. This rule extends to all classes.*"(1)

3. He, who has no son of any of the twelve descriptions above-stated (Ch. I. s. 11.) is one having 'no male issue.' Of a man, thus leaving no male progeny, and departing for another world, the heir, or successor, is that person, among such as have been here enumerated, who is next in order, on failure of the first-mentioned respectively. Such is the construction of the sentence.

4. This rule, or order of succession, in the taking of an inheritance, must be understood as extending to all castes whether the Múrdhávasikta and others in the direct series of the classes, or Súta and the rest in the inverse order; and as comprehending the several classes, the sacerdotal and the rest.

5. In the first place, the wife shares the estate. "Wife" (patní) signifies a woman espoused in lawful wedlock; conformably with the etymology of the term as implying association in religious rites.

6. Vriddha-Manu also declares the widow's right to the whole estate. "The widow of a childless man, keeping unsullied her husband's bed, and persevering in religious observances, shall present his funeral oblation and obtain [his] entire share." (2) Brihad-Vishnu likewise ordains it: "The wealth of him, who leaves no male issue, goes to his wife; on failure of her, it devolves on daughters; if there be none, it belongs to the father; if he be dead, it appertains to the mother."(3) So does Kátyáyana: "Let the widow succeed to her husband's wealth, provided she be chaste; and, in default of her, the daughter inherits, if unmarried."(4) And again, in another place: "The widow, being a woman of respectable family, or the daughters, or on failure of them the father, or the mother, or the brother, or his sons, are pronounced

(1) Yájñavalkya, ii. 136-137.
(2) II. Cole Dig., 535, ccccviii.
(3) Not found in Cole. Dig.
(4) Do.

to be the heirs of one who leaves no male issue." (1) Also, Brihaspati: "Let the wife of a deceased man, who left no male issue, take his share, though kinsmen, a father, a mother, or uterine brothers survive." (2)

7. Passages, opposed to these likewise occur. Thus Nárada has stated the succession of brothers, though a wife be living, and has directed the assignment of maintenance only to widows. "Among brothers, if any one die without issue, or enter a religious order, let the rest of the brothers divide his wealth, except the wife's separate property. Let them allow maintenance to his women for life, provided these preserve unsullied the bed of their lord. But, if they behave otherwise, the brothers may resume that allowance." (3) Manu propounds the succession of the father, or of the brother, to the estate of one who has no male offspring: "Of him, who leaves no son, the father shall take the inheritance, or the brothers." (4) He likewise states the mother's right to the succession, as well as the paternal grandmother's: "Of a son dying childless, the mother shall take the estate: and, the mother also being dead, the father's mother shall take the heritage." (5) Sankha also declares the successive rights of brothers and of both parents, and lastly of the eldest wife: "The wealth of a man, who departs for heaven, leaving no male issue, goes to his brothers. If there be none, his father and mother take it: or his eldest wife." (6) Kátyáyana too says, "If a man die separate from his co-heirs, let his father take the property on failure of male issue; or successively the brother, or the mother, or the father's mother." (7)

8. The application of these and other contradictory passages is thus explained by Dháresvara: 'The rule deduced from the texts [of Yájñavalkya, &c.], that the wife shall take the estate, regards the widow of a separated brother: and that, provided she be solicitous of authority for raising up issue to her husband. Whence is it inferred, that a widow succeeds to the estate, provided she seek permission for raising up issue, but not independently of this consideration? From the text above cited, "Of him, who leaves no son, the father shall take the inheritance," (8) and other similar passages [as Nárada's, &c]. For here a rule of adjustment and a reason for it must be sought; but there is none other. Besides it is confirmed by a passage of Gautama: "Let kinsmen allied by the funeral oblation, by family name, and by descent from the same patriarch, share the heritage; or the widow of a childless man, if she seek to raise up offspring to him." (9)

9. 'The meaning of the text is this: persons, connected by a

(1) Not found in Cole. Dig.
(2) Brihaspati, xxv. 48.
(3) Nárada, xiii. 25-26.
(4) Manu, ix. 185.
(5) *Ibid* ix. 217.
(6) II. Cole. Dig., 532, ccccliii.
(7) II. Cole. Dig., 552 ccccxxv.
(8) Manu, ix. 185.
(9) Gautama, xxviii. 21 and 22.

common oblation, by race, or by descent from a patriarch, share the effects of one who leaves no issue: or his widow takes the estate, provided she seek progeny.'

10. 'Manu likewise shows by the following passage, that when a brother dies possessed of separate property, the wife's claim to the effects is in right of progeny, and not in any other manner. "He, who keeps the estate of his brother and maintains the widow, must, if he raise up issue to his brother, deliver the estate to the son."(1) So, in the case of undivided property likewise, the same author says, "Should a younger brother have begotten a son on the wife of his elder brother, the division must then be made equally: thus is the law settled."(2)

11. 'Vasishṭha also, forbidding an appointment to raise up issue to the husband, if sought from a covetous motive ("An appointment shall not be through covetousness:")(3) thereby intimates, that the widow's succession to the estate is in right of such an appointment, and not otherwise.

12. 'But, if authority for that purpose have not been received, the widow is entitled to maintenance only; according to the text of Nárada: "Let them allow maintenance to his women for life."'(4)

13. The same will be subsequently declared by the contemplative saint: "And their childless wives, conducting themselves aright, must be supported; but such, as are unchaste, should be expelled; and so, indeed, should those, who are perverse."(5)

14. 'Moreover, since the wealth of a regenerate man, is designed for religious uses, the sucession of women to such property is unfit; because they are not competent to perform religious rites. Accordingly, it has been declared by some author, "Wealth was produced for the sake of solemn sacrifices: and they, who are incompetent to perform those rites, do not participate in the property, but are all entitled only to food and raiment." "Riches were ordained for sacrifices. Therefore they should be allotted to persons who are capable of performing religious duties; and not be assigned to women, to fools, and to people neglectful of holy obligations.(6)"

15. That is wrong: for authority to raise up issue to the husband is neither specified in the text, "The wife and the daughters also, &c.," nor is it suggested by the premises. Besides, it may be here asked; is the appointment to raise up issue a reason for the widow's succession to the property? or is the issue, borne by her, the cause of her succession? If the appointment alone be the reason, it follows, that she has a right to the estate, without having borne a son; and the right of the son subsequently produced does not ensue. But, if the offspring be the sole cause, the wife should

(1) Manu, ix. 146.
(2) *Ibid*, ix. 120.
(3) Vasishtha, xvii. 65.
(4) Nárada, xiii. 26.
(5) Yájñavalkya ii. 143.
(6) II. Cole. Dig., 538, ccccxiii.

not be mentioned as a successor: since, in that case, the son alone has a right to the wealth.

16. But, it is said, women have a title to property, either through the husband, or through the son, and not otherwise. That is wrong: for it is inconsistent with the following text and other similar passages. "What was given before the nuptial fire, what was presented at the bridal procession, what has been given in token of affection, what has been received by the women from her brother, her mother, or her father, are denominated the sixfold property of a woman."(1)

17. Besides, the widow and the daughters are declared successors, on failure of sons of all descriptions. Now by here affirming the right of a widow, who has been appointed to raise up issue, the right of her son to succeed to the estate is virtually affirmed. But that had been already declared: and therefore the wife ought not to be mentioned among heirs of one who leaves no male issue.

18. But, it is alleged, the right of a widow, who is authorized to raise up issue to her husband, is deduced from the text of Gautama: "Let kinsmen allied by the funeral oblation, by family name, and by descent from the same patriarch, share the heritage; or the widow of a childless man: and she may seek offspring."(2) This too is erroneous: for the sense, which is there expressed, is not 'if she seek to obtain offspring, she may take the wealth of one who left no issue;' but 'persons allied by the funeral oblation, by family name, and by descent from the same patriarch share the effects of one who leaves no issue; or his widow takes his estate: and she may either seek to obtain progeny, or may remain chaste.' This is an instruction to her, in regard to her duty. For the particle (vá) 'or,' denoting an alternative, does not convey the sense of 'if.' Besides it is fit, that a chaste woman should succeed to the estate, rather than one appointed to raise up issue, reprobated as this practice is in the law as well as in popular opinion. The succession of a chaste widow is expressly declared: "The widow of a childless man, keeping unsullied her husband's bed, and persevering in religious observances, shall present his funeral oblation and obtain his entire share."(3) And an authority to raise up issue is as expressly condemned by Manu: "By regenerate men no widow must be authorized to conceive by any other; for they, who authorize her to conceive by another, violate the primeval law."(4)

19. But the text of Vasishṭha "An appointment shall not be through covetousness;"(5) must be thus interpreted: 'if the husband die either unseparated from his coparceners or reunited with them, she has not a right to the succession; and therefore an appointment to raise up issue must not be accepted for the sake of securing the succession to her offspring.'

(1) Manu, ix. 194.
(2) Gautama, xxviii. 21-22.
(3) II. Cole. Dig. 535, ccccviii.
(4) Manu, ix. 64.
(5) Vasishtha, xvii. 65.

20. As for the text of Nárada, "Let them allow maintenance to his women for life;"(1) since re-union of parceners had been premised in a former text, viz.: "The shares of re-united coparceners are considered to be exclusively theirs;"(2) it must be meant to assign only maintenance to their childless widows. Nor is tautology an objection to that passage, the intermediate text being relative to reunited parceners, "Among brothers, if any one die without issue, &c."(3) For women's separate property is exempted from partition by this explanation of what had been before said and a mere manitenance for the widow is at the same time ordained.

21. The passage, which has been cited, "Their childless wives, conducting themselves aright, must be supported;"(4) will be subsequently shown to apply to the wife of an impotent man and so forth.

22. As for the argument, that the wealth of a regenerate man is designed for religious uses and that a woman's succession to such property is improper because she is not competent to perform religious rites, that is wrong: for, if every thing which is wealth, be intended for sacrificial purposes, then charitable donations, burnt offerings, and similar matters, must remain unaccomplished. Or, if it be alleged, that the applicability of wealth to those uses is uncontradicted, since sacrifice here signifies religious duty in general; and charitable donations, burnt offerings and the rest are acts of religious duty: still other purposes of opulence and gratification, which are to be effected by means of wealth, must remain unaccomplished; and, if that be the case, there is an inconsistency in the following passages of Yájñavalkya, Gautama and Manu. "Neglect not religious duty, wealth or pleasure, in their proper season."(5) "To the utmost of his power, a man should not let morning, noon or evening be fruitless, in respect of virtue, wealth and pleasure.(6) "The organs cannot so effectually be restrained by avoiding their gatification, as by constant knowledge."(7)

23. Besides, if wealth be designed for sacrificial uses, the argument would be reversed, by which it is shown, that the careful preservation of gold [inculcated by a passage of the Veda] "Let gold be preserved," is intended not for religious ends, but for human purposes.(a)

24. Moreover, if the word sacrifice import religious duty in general, the succession of women to estates is most proper, since

(1) Nárada, xiii. 26.
(2) *Ibid*, xiii. 24.
(3) *Ibid*, xiii. 25.
(4) Yájñavalkya, ii. 143.
(5) Yájñavalkya, ii. 115.
(6) Gautama, ix. 46.
(7) Manu, ii. 96.

(a) In the 12th Adhikarana of the 4th pada of the 3rd chapter of the Mimamsa, it is discussed whether the Vedic injunction to preserve gold has reference to the efficacy of the sacrifice in which it is employed or whether it is intended to serve some merely temporal object; the conclusion being in favor of the latter view. This conclusion, the author considers incompatible with the theory that wealth was given purely for purposes of sacrifices.

they are competent to the performance of auspicious and conservatory acts [as the making of a pool or a garden &c.]

25. The text of Nárada, which declares the dependence of women, ("A woman has no right to independence") (1) &c., is not incompatible with their acceptance of property; even admitting their dependence.

26. How then are the passages before cited ("Wealth was produced for the sake of solemn sacrifices, &c." (2) to be understood? The answer is, wealth which was obtained for the express purpose of sacrifices, must be appropriated exclusively to that use even by sons and others. The text intends that: for, the following passage declares it to be an offence [to act otherwise,] without any distinction in respect of sons and successors. "He, who, having received articles for a sacrifice, disposes not of them for that purpose, shall become a kite or a crow" (3).

27. It is said by Kátyáyana "Heirless property goes to the king, deducting however a subsistence for the females as well as the funeral charges: but the wealth belonging to a venerable priest, let him bestow on venerable priests." "Heirless property," or wealth which is without an heir to succeed to it, "goes to the king," becomes the property of the sovereign; "deducting however a subsistence for the females as well as the funeral charges:" that is, excluding or setting apart a sufficiency for the food and raiment of the women, and as much as may be requisite for the sraddhas and other rites in honour of the late owner, the residue goes to the king. Such is the construction of the text. An exception to this is: "but the wealth belonging to a venerable priest," deducting however a subsistence for the females as well as the charges of obsequies, 'let him now bestow on a venerable priest.'

28. This relates to women kept in concubinage: for the term employed is "females" (yoshid.) The text of Nárada likewise relates to concubines; since the word there used is "woman" (stri.) "Except the wealth of a Bráhmaṇa [property goes to the king on failure of heir.] But a king, who is attentive to the obligations of duty, should give a maintenance to the women of such persons. The law of inheritance has been thus declared."(4)

29. But since the term "wife" (patní) is here employed, the succession of a wedded wife, who is chaste, is not inconsistent with those passages.

30. Therefore the right interpretation is this: when a man, who was separated from his co-heirs and not re-united with them, dies leaving no male issue, his widow takes the estate in the first instance. For partition had been premised; and reunion will be subsequently considered.

31. It must be understood, that the explanation, proposed by

(1) Nárada, xiii. 31.
(2) II. Cole. Dig., 538, ccccxiii.
(3) Manu, xi. 25.
(4) Nárada, xiii. 51—52.

Śrîkara and others, restricting [the widow's succession] to the case of a small property, is thus refuted. If there be legitimate sons, it is provided, whether partition be made in the owner's life-time or after his decease, that the wife shall take a share equal to the son's. "If he make the allotments equal, his wives must be rendered partakers of like portions."(1) And again: "Of heirs dividing after the death of the father, let the mother also take an equal share."(2) Such being the case, it is a mere error to say, that the wife takes nothing but a subsistence from the wealth of her husband who died leaving no male issue.

32. But it is argued, that, under the terms of the texts above cited, ("his wives must be rendered partakers of like portions;" and, "let the mother also take an equal share;") a woman takes wealth sufficient only for her maintenance. That is wrong: for the words "share" or "portion," and "equal" or "like," would then become useless.

33. Or suppose, that, if the wealth be great, she takes precisely enough for her subsistence; but, if small, she receives a share equal to that of a son. This again is wrong: for variableness in the precept must be the consequence. Thus if the estate be considerable, the texts above cited, ("his wives must be rendered partakers of like portions;" and "let the mother also take an equal share;") assisted by another passage ["Let them allow a maintenance to his women for life;" § 12.] suggest an allotment sufficient for bare support. But, if the estate be considerable, the same passages indicate the assignment of a share equal to a son's.

34. Thus, in the instance of the Châturmâsya sacrifices, in the disquisition of the [Mímámsá] on the passage *devayoh pranayanti* (*a*) where it is maintained by the opponent, that the rules for the preparation of the sacrificial fire at the Soma-yâga extend to these sacrifices; in consequence of which the injunction not to construct a northern altar (uttaravedi) at the Vaisvadeva and Sunásíríya sacrifices, must be understood as a prohibition of such altar; but it is answered by an advocate for the right opinion, (*b*) that it is not a prohibition of that altar as suggested by extending to these sacrifices the rules for preparing the sacrificial fire at the Soma-yâga, but an exception to the express rule "prepare an uttara-vedi at this sacrifice [viz. at the Châturmâsya:] it is urged in reply by

(1) Yájñavalkya, ii. 116. (2) Yájñavalkya, ii. 124.

(*a*) The allusion here is to the 9th Adhikarana of the 3rd pada of the 7th chapter of the Mímámsa. The discussion there relates to the construction of an uttaravedi (northern altar) in Châturmasya sacrifices. The portion of it which is here in point is the recognition of the maxim that the words conveying an injunction should bear the same construction all through and that the construction of one and the same injunction so as to have a double import is open to the objection of variableness in the precept.

(*b*) *An advocate of the right opinion.* This, we fear, does not correctly interpret the word *Siddhantekadêsin* found in the original. A *Siddhantekadêsin* is one who holds the right conclusion but who supports it by untenable reasoning. The context clearly proves that the term is used in this sense.

the opponent, that variableness in the precept must follow, since the same precept thus authorizes the occasional construction of the altar, with reference to a prohibition of it, at the first and last of the periods of sacrifice, and commands the construction of it at the two middle periods, independently of any other maxim: but it is finally shown as the right doctrine, for the very purpose of obviating the objection of variableness in the precept, that the prohibition of the altar at the first and last of the periods of sacrifice is a recital of a constant rule; and that the injunction, "prepare the uttara-vedi at this sacrifice," commands its construction at the two middle periods with a due regard to that explanatory recital.

35. As for the doctrine, that, from the text of Manu ("Of him, who leaves no son, the father shall take the inheritance, or the brothers,")(1) as well as from that of Sankha ("The wealth of a man, who departs for heaven, leaving no male issue, goes to his brothers. If there be none, his father and mother take it: or his eldest wife.")(2) the succession of brothers to the estate of one who leaves no male issue, is deduced; and that a wife obtains a sufficiency for her support, under the text "Let them allow a maintenance to his women for life:"(3) this being determined, if a rich man die, leaving no male issue, the wife takes as much as is adequate to her subsistence, and the brothers take the rest; but if the estate be barely enough for the support of the widow, or less than enough, this text ("The wife and the daughters also;")(4) is propounded, on the controverted question whether the widow or the brothers inherit, to show, that the first claim prevails. This opinion the reverend teacher does not tolerate: for he interprets the text, "Of him who leaves no son, the father shall take the inheritance, or the brothers;"(5) as not relating to the order of succession, since it declares an alternative; but as intended merely to show the competency for inheriting, and as applicable when the preferable claimants, the widow and the rest, fail. And the text of Sankha relates to a re-united brother.

36. Besides it does not appear either from this passage [of Yájñavalkya] or from the context, that it is relative to an inconsiderable estate. If the concluding sentence "On the failure of the first among these, the next in order is heir"(6) be restricted to the case of a small property, reference to another passage in two instances only relates to wealth generally in the other instances. The consequent defect of variableness in the precept (§ 33.) affects this interpretation.

37. "If a woman, becoming a widow in her youth be headstrong, maintenance must in that case be given to her for the support of life."(7) This passage of Hárita is intended for a denial

(1) Manu, x. 185.
(2) II. Cole. Dig., 532, ccccciii.
(3) Nárada, xiii. 26.
(4) Yájñavalkya, ii. 136.
(5) Manu, ix. 185.
(6) Yájñavalkya, ii. 137.
(7) II. Cole. Dig., 536, ccccix.

of the right of a widow suspected of incontinency, to take the whole estate. From this very passage, it appears that a widow, not suspected of misconduct, has a right to take the whole property.

38. With the same view, Sankha has said "Or his eldest wife." (§ 7.) Being eldest by good qualities, and not suspected of incontinency, she takes the whole wealth; and, like a mother, maintains any other headstrong wife. Thus all is unexceptionable.

39. Therefore it is a settled rule, that a wedded wife, being chaste, takes the whole estate of a man, who being divided from his co-heirs and not subsequently reunited with them, dies leaving no male issue(a).

SECTION II.

Right of the daughters and daughter's sons.

1. On failure of her, the daughters inherit. They are named in the plural number (Section 1. § 2.) to suggest the equal or unequal participation of daughters alike or dissimilar by class.

2. Thus Kátyáyana says, "Let the widow succeed to her husband's wealth, provided she be chaste; and, in default of her, let the daughter inherit, if unmarried." Also Brihaspati: "The wife is pronounced successor to the wealth of her husband; and, in her default, the daughter. As a son, so does the daughter of a man proceed from his several limbs. How then should any other person take her father's wealth?"(1).

3. If there be both a married and an unmarried daughter, the unmarried one takes the succession under the specific provisions of the text above cited ("in default of her, let the daughter inherit, if unmarried").

4. So, if the competition be between an unprovided and a rich daughter, the unprovided one inherits: but, on failure of such, the rich one succeeds: for the text of Gautama is equally applicable to the paternal, as to the maternal, estate. "A woman's separate property goes to her daughters, unmarried or unprovided."(2)

5. It must not be supposed, that this relates to the appointed daughter: for, in treating of male issue, she and her son have been pronounced equal to the legitimate son ("Equal to him is the son of an appointed daughter)," (3) or the daughter appointed to be a son.

6. By the import of the particle "also" (Sect. 1, and 2.) the

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(1) Brihaspati, xxv. 55-56.
(2) Gautama, xxviii. 24.
(1) Yájñavalkya, ii. 129.

(a) Where there are several widows, they succeed together. If the property be impartible, the senior widow alone succeeds, the others being entitled to maintenance. The widow succeeds only if she be chaste. Unchastity of the widow after her succession to the estate does not devest the estate. (*Keri Kolitani* v. *Moniceram*, 7 I. A. 115; I. L. R. 5 C. 776.)

daughter's son succeeds to the estate on failure of daughters. Thus Vishnu says, "If a man leave neither son, nor son's son, nor [wife, nor female] issue, the daughter's son shall take his wealth. For, in regard to the obsequies of ancestors, daughter's sons are considered as son's sons."(1) Manu likewise declares, "By that male child, whom a daughter, whether formally appointed or not, shall produce from a husband of equal class, the maternal grandfather becomes the grandsire of a son's son: let that son give the funeral oblation and take the inheritance."(2)(a)

SECTION III.

Right of the parents.

1. On failure of those heirs, the two parents, meaning the mother and the father, are successors to the property.

2. Although the order, in which parents succeed to the estate, does not clearly appear since a conjunctive compound is declared to present the meaning of its several terms at once; and the omission of one term and retention of the other constitute an exception to that [compound expression;] yet, as the word 'mother' stands first in the phrase into which that is resolvable, and is first in the regular compound (mátápitarau) 'mother and father, when not reduced by the omission of one term and retention of the other; it follows from the order of the terms and that of the sense which is thence deduced, and according to the series thus presented in answer to an inquiry concerning the order of succession, that the mother takes the estate in the first instance; and, on failure of her, the father.

3. Besides, the father is a common parent to other sons, but the mother is not so: and, since her propinquity is consequently greatest, it is fit that she should take the estate in the first instance, conformably to the text "To the nearest sapiṇḍa, the inheritance next belongs."(3)

4. Nor is the claim in virtue of propinquity restricted to (sapindas) kinsmen allied by funeral oblations: but, on the contrary, it appears from this very text, (§ 3) that the rule of propinquity is

(1) II Cole. Dig., 548, ccccxxi.
(2) Manu, ix. 136.
(3) Manu, ix. 187.

(a) The daughter succeeds only if she be chaste (*Ramnath* v. *Durga*, I. L. R. 4 C. 550). In Bombay she succeeds though unchaste. (*Advyapa* v. *Rudrava*, I. L. R. 4 B. 104) and so in Allahabad. (*Ganga* v. *Ghasita*, I. L. R. 1 A. 46). In Bengal, daughters succeed in the following order: maiden daughter, the daughter having and likely to have male issue, together. In Benares, first the maiden daughter, secondly, married daughters who are poor, thirdly, married daughters who are rich. In Mithila, first, the maiden daughter, secondly, the married daughters. The daughter's son never takes so long as any daughter is alive (*Sastri* v. *Vengu Ammal*, Mad. Dec. of 1861). Daughter's sons take *per capita* (*Ramdhun* v. *Kishen Khanth*, 3 S. D. 100). The daughter's son is full owner (*Sibta* v. *Badre*, I. L. R. 3 A. 134; *Muttuvadugana-dha Tevar* v. *Periasami Tevar*, I. L. R. 19 M. 451).

effectual, without any exception, in the case of (samánodakas) kindred connected by libations of water, as well as other relatives, when they appear to have a claim to the succession.

5. Therefore, since the mother is the nearest of the two parents, it is most fit, that she should take the estate. But, on failure of her, the father succeeds to the property(a).

SECTION IV.

Right of the brothers.

1. On failure of the father, brothers share the estate. Accordingly Manu says, "Of him, who leaves no son, the father shall take the inheritance or the brothers." (1)

2. It has been argued by Dhâresvara, that, 'under the following text of Manu, "Of a son dying childless, the mother shall take the estate; and, the mother also being dead, the father's mother shall take the heritage;"(2) even while the father is living, if the mother be dead, the father's mother, or in other words the paternal grandmother, and not the father himself, shall take the heritage: because wealth, devolving upon him, may go to sons dissimilar by class; but what is inherited by the paternal grandmother, goes to such only as appertain to the same class: and therefore the paternal grandmother takes the estate.'

3. The holy teacher [Visvarûpa] does not assent to that doctrine: because the heritable right of sons even dissimilar by class has been expressly ordained by a passage above cited: "The sons of a Bráhmaṇa, in the several castes, have four shares, or three, or two, or one."(3)

4. But the passage of Manu, expressing that "The property of a Bráhmaṇa shall never be taken by the king," (4) intends the sovereign, not a son [of the late owner by a woman of the royal or military class].

5. Among brothers, such, as are of the whole blood, take the inheritance in the first instance, under the text before cited: "To the nearest sapinda, the inheritance next belongs,"(5), since those of the half-blood are remote through the difference of the mothers.

6. If there be no uterine brothers, those by different mothers inherit the estate.

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(1) Manu, ix. 185.
(2) *Ibid*, ix. 217.
(3) Yájñavalkya, ii. 126.
(4) Manu, ix. 189.
(5) *Ibid*, ix. 187.

(*a*) In Bengal the father takes before the mother. (*Hemlata* v. *Goluck Chunder*, 7 S. D. 108). In Bombay and Madras the mother succeeds before the father. (*Balkrishna* v. *Lukshman*, I. L. R. 14 B. 605). In Guzerat, the father is preferred to the mother (*Khodabai* v. *Bahdhar*, I. L. R. 6 B. 541). The Mitákshára, the Vivada Chintamani, and the Saraswati Vilasa, are in favour of the mother taking before the father, while the Mayukha prefers the father to the mother, as the law in Bengal does.

7. On failure of brothers also, their sons share the heritage in the order of the respective fathers.

8. Where there are brothers and nephews, the nephews have no title to the succession: for their right of inheritance is declared to be on failure of brothers ["both parents, brothers likewise, and their sons." Sect. 1. § 2.(1).

9. However, when a brother has died leaving no male issue and the estate has consequently devolved on his brothers indifferently, if any one of them die before a partition of their brother's estate takes place, his sons do in that case acquire a title through their father: and it is fit, therefore, that a share should be allotted to them, in their father's right, at a subsequent distribution of the property between them and the surviving brothers (a).

SECTION V.

Succession of kindred of the same family name: termed Gotraja, or gentiles.

1. If there be not even brother's sons, agnates share the estate. Agnates are the paternal grandmother and relations connected by funeral oblations of food and libations of water (Sapindas and Samánodakas).

2. First the paternal grandmother takes the inheritance. The paternal grandmother's succession immediately after the mother, was seemingly suggested by the text before cited, "And, the mother also being dead, the father's mother shall take the heritage:"(2) No place, however, is found for her in the compact series of heirs from the father to the nephew: and that text ("the father's mother shall take the heritage") is intended only to indicate her general competency for inheritance. She must, therefore, by preference succeed immediately after the nephew; and thus there is no contradiction.

3. On failure of the paternal grandmother, those sprung from the same family with the deceased (sapindas) namely the paternal grandfather and the rest, inherit the estate. For

(1) Yájñavalkya, ii. 136. (2) Manu, ix. 217.

(a) Brothers of the half-blood take after the brothers of the full blood in allthe Schools of Law. The Mayukha law, however, makes the brothers of the half-blood come in only after nephews of the full blood. (*Krishnaji* v. *Pandurang*, 12 B. H. C. 65). The nephews of the full blood succeed before the nephews of the half-blood. (*Kajlash* v. *Gooroo*, 3 W. R. 43). The grand-nephew, though not expressly mentioned by the Mitákshára, takes after the nephew. (*Parasara* v. *Rungaraja*, I. L. R. 2 M. 202), and grand-nephews of the full blood take before those of the half-blood. (*Dejumber Roy* v. *Mote Lal*, I. L. R. 9 C. 563). In *Lakshmi Narasimma* v. *Jagannadham* I. L. R. 5 M. 291, however the brother's grandson was excluded by the paternal uncle. We doubt if this conclusion is valid. The distinction between whole blood and half-blood was held to apply to all sapindas *Subba Singh* v. *Sarafraz Kunwar*, I. L. R. 19 A 215.

kinsmen sprung from a different family, that are sapindas are indicated by the terms cognate (bandhu Sect. 6.)

4. Here, on failure of the father's descendants, the heirs are successively the paternal grandmother, the paternal grandfather, the uncles and their sons.

5. On failure of the paternal grandfather's descendants the paternal great-grandmother, the great-grandfather, his sons and their sons inherit. In this manner must be understood the succession of kindred belonging to the same general family till the seventh degree among the sapindas.

6. If there be none such, the succession devolves on kindred connected by libations of water: and they must be understood to reach to seven degrees beyond the kindred connected by funeral oblations of food: or else, as far as the limits of knowledge as to birth and name extend. Accordingly Brihad-Manu says: "The relation of the sapiṇḍas, or kindred connected by the funeral oblation, ceases with the seventh person: and that of samánodakas, or those connected by a common libation of water, extends to the fourteenth degree; or as some affirm, it reaches as far as the memory of birth and name extends. Beyond these are men of the same gotra or family name."(1)

SECTION VI.

On the succession of cognate kindred, bandhus.

1. On failure of agnates, the cognates are heirs. Cognates are of three kinds; related to the person himself, to his father, or to his mother as is declared by the following text. "The sons of his own father's sister, the sons of his own mother's sister, and the sons of his maternal uncle, must be considered as his own cognate kindred. The sons of his father's paternal aunt, the sons of his father's maternal aunt, and the sons of his father's maternal uncle, must be deemed his father's cognate kindred. The sons of his mother's paternal aunt, the sons of his mother's maternal uncles, must be reckoned his mother's cognate kindred."(2)

2. Here, by reason of near affinity, the cognate kindred of the deceased himself, are his successors in the first instance: on failure of them, his father's cognate kindred: or, if there be none, his mother's cognate kindred. This must be understood to be the order of succession here intended.

SECTION VII.

On the succession of strangers upon failure of bandhus.

1. If there be no bandhus of the deceased, the preceptor, or, on failure of him, the pupil, inherits, under the text of Apastamba.

(1) and (2) Quoted in the Saraswati Vilasa as Baudhayana's.

"If there be no male issue, the nearest sapiṇḍas inherit: or, in default of kindred, the preceptor: or, failing him, the disciple."(1)

2. If there be no pupil, the fellow-student is the successor. He, who received his investiture, or instruction in reading or in the knowledge of the sense of scripture, from the same preceptor, is a fellow-student.

3. If there be no fellow-students, some learned priest should take the property of a Bráhmaṇa, under the text of Gautama: "Venerable priests should share the wealth of a Bráhmaṇa, who leaves no issue."(2)

4. For want of them, any Bráhmaṇa may be the heir. So Manu declares: "On failure of all those, the lawful heirs are such Bráhmaṇas as have read the three Vedas, as are pure in body and mind, as have subdued their passions. Thus virtue is not lost."(3)

5. Never shall a king take the wealth of a Bráhmin; for the text of Manu forbids it: "The property of a Bráhmaṇa shall never be taken by the king; this is a fixed law."(4)(a) It is also declared by Nárada: "If there be no heir to a Bráhmaṇa's wealth, on his demise, it must be given to a Bráhmaṇa. Otherwise the king is tainted with sin."(5)

6. But the king, and not a priest may take the estate of a Kshatriyá or other person of an inferior caste on failure of heirs down to the fellow-student. So Manu ordains: "But the wealth of the other classes, on failure of all [heirs,] the king may take."(6)

SECTION VIII.

On succession to the property of a hermit or of an ascetic.

1. It has been declared, that sons and grandsons [or great-grandsons] take the heritage; or, on failure of them, the widow or others. The author now propounds an exception to both those rules:

"*The heirs of a hermit, of an ascetic, and of a professed student, are, in their order, the preceptor, the virtuous pupil, and the spiritual brother and associate in holiness.*"(7)

2. The heirs to the property of a hermit, of an ascetic, and of a student in theology, are, in the inverse order the preceptor, a virtuous pupil, and a spiritual brother belonging to the same hermitage.

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(1) Apastamba, ii. 6. 14, 2—3.
(2) Gautama, xxviii. 41.
(3) Manu, ix. 188.
(4) *Ibid*, ix. 189.
(5) Attributed to Nárada but not found in his Institutes in the S. B. E. Series.
(6) Manu, ix. 189.
(7) Yájñavalkya, ii. 138.

(a) This prohibition was relied on, but the contention was overruled. (*Collector of Masulipatam* v. *Cavaly Vencata*, 8, M. I. A. 500).

3. The student (brahmáchárí) must be a professed or perpetual one: for the mother and the rest of the natural heirs take the property of a temporary student; and the preceptor is declared to be heir to a professed student as an exception.

4. A virtuous pupil takes the the property of a *yatí* or ascetic. The virtuous pupil, again, is one who is assiduous in the study of theology, in retaining the science, and in practising its ordinances. For a person, whose conduct is bad, is unworthy of the inheritance, were he even the preceptor or any other.

5. A spiritual brother and associate in holiness takes the wealth of a hermit (vánaprastha.) A spiritual brother is one who is engaged as a brotherly companion. An associate in holiness is one appertaining to the same hermitage. Being a spiritual companion and belonging to the same hermitage, he is a spiritual brother and associate in holiness.

6. But, on failure of these, any one associated in holiness takes the wealth; even though sons and others exist.

7. Are not those, who have entered into a religious profession, unconnected with property? since Vasishtha declares, "They, who have entered into another order, are debarred from shares."(1) How then can there be a partition of their property? Nor has a professed student a right to his own acquired wealth: for the acceptance of presents, and other means of acquisition, are forbidden to him. And, since Gautama ordains, that "A mendicant shall have no savings."(2) the mendicant also can have no effects by himself acquired.

8. The answer is, a hermit may have property: for the text [of Yájñavalkya] says "The hermit may make a hoard of things sufficient for a day, a month, six months, or a year; and, in the month of Asvina, he should abandon what has been collected."(3) The ascetic too has clothes, books and other requisite articles: for a passage directs that "he should wear clothes to cover his private parts; and a text prescribes, that "he should take the requisites for his austerities and his sandals." The professed student likewise has clothes to cover his body; and he possesses also other effects.

9. It was therefore proper to explain the partition of, or inheritance to, such property.

SECTION IX.

On the re-union of kinsmen after partition.

1. The author next propounds an exception to the maxim, that the wife and others succeed to the estate of one who dies leaving no male issue.

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(1) Vasishtha, xvii. 52.
(2) Gautama, iii. 11.
(3) Yájñavalkya, iii. 47.

"A re-united [brother] shall keep the share of his re-united [co-heir] who is deceased; or shall deliver it to [a son subsequently] born."(1)

2. Effects, which had been divided and which are again mixed together, are termed re-united. He to whom such appertain, is a re-united parcener.

3. Re-union cannot take place with any person whoever it be but only with a father, a brother, or a paternal uncle: as Brihaspati declares: "He, who, being once separated, lives again through affection with his father, brother, or paternal uncle, is said to be re-united."(2)

4. The share or allotment of such a re-united parcener deceased, must be delivered by the surviving re-united parcener, to a son subsequently born, in the case where the widow's pregnancy was unknown at the time of the distribution. Or, on failure of male issue, he, and not the widow, nor any other heirs, shall take the inheritance.

5. The author states an exception to the rule, that a re-united brother shall keep the share of his re-united co-heir:

"But an uterine [or whole] brother shall thus retain or deliver the allotment of his uterine brother."(3)

6. The words "re-united brother" and "re-united co-heir" are understood. Hence the construction, as in the preceding part of the text, is this: The allotment of a re-united brother of the whole blood, who is deceased, shall be delivered, by the surviving re-united brother of the whole blood, to a son born subsequently. But, on failure of such issue, he shall retain it. Thus, if there be brothers of the whole blood and half-blood, an uterine [or whole] brother, being a re-united parcener, not a half-brother who is so, takes the estate of the re-united uterine brother. This is an exception to what had been before said. (§ 1.)

7. Next, in answer to the inquiry, who shall take the succession when a re-united parcener dies leaving no male issue, and there exists a whole brother not re-united, as well as a half-brother who was associated with the deceased? the author delivers a reason why both shall take and divide the estate.

"A half-brother, being again associated, may take the succession, not a half-brother though not re-united: but one, united [by blood though not by co-parcenary,] may obtain the property; and not [exclusively] the son of a different mother."(4)

8. A half-brother, being a re-united parcener, takes the estate; but a half-brother, who was not re-united, does not obtain the wealth. Thus, by the direct provisions of the text, and by the

(1) Yájñavalkya, ii. 139.
(2) Brihaspati, xxv. 72.
(3) Yájñavalkya, ii. 139.
(4) *Ibid*, ii. 140.

exception, re-union is shown to be a reason for a half-brother's succession.

9. The term "not re-united" is connected also with what follows; and hence, even one who was not again associated, may take the effects of a deceased re-united parcener. Who is he? The author replies: "one united;" that is, one united by the identity of the womb, in other words, an uterine or whole brother. It is thus declared, that relation by the whole blood is a reason for the succession of the brother, though not re-united in co-parcenary.

10. The term "united" likewise is connected with what follows: and here it signifies re-united [as a co-parcener.] The words "not the son of a different mother" must be interpreted by supplying the affirmative particle (*eva*) understood. Though he be a re-united parcener, yet, being issue of a different mother, he shall not exclusively take the estate of his associated co-heir.

11. Thus, by the occurrence of the word "though" (*api*) in one sentence ("though not re-united," &c., § 7.) and by the denial implied in the restrictive affirmation (*eva* "exclusively,") understood in the other, ("one united may take the property, and not exclusively the son of a different mother;") it is shown, that a whole brother not re-united, and a half-brother being re-united, shall take and share the estate: for the reasons of both rights may subsist at the same instant.

12. This is made clear by Manu, who, after premising partition among re-united parceners, "If brothers, one divided and living again together as parceners, make a second partition;" (1) declares "should the eldest or youngest of several brothers be deprived of his allotment at the distribution, or should any one of them die, his share shall not be lost: but his uterine brothers and sisters, and such brothers as were re-united after a separation, shall assemble together and divide his share equally." (2)

13. Among re-united brothers, if the eldest, the youngest or the middlemost, at the delivery of shares, that is, at the time of making a partition, lose or forfeit his share by his entrance into another order or by the guilt of sacrilege, or by any other disqualification; or if he be dead, his allotment does not lapse, but shall be set apart. The meaning is, that the re-united parceners shall not exclusively take it. The author states the appropriation of the share so reserved: "His uterine brothers and sisters, &." (§ 12.) Brothers of the whole blood, or by the same mother, though not re-united, share that allotment so set apart. Even though they had gone to a different country, still, returning thence and assembling together, they share it: and that "equally;" not by a distribution of greater and less shares. Brothers of the half-blood, who were re-united after separation, and sisters by the same mother, likewise participate. They inherit the estate and divide it in equal shares.

(1) Manu, ix. 210. (2) Manu, ix. 211, 212

SECTION X.

On exclusion from inheritance.

1. The author states an exception to what has been said by him respecting the succession of the son, the widow and other heirs, as well as the re-united parcener.

"*An impotent person, or outcast* (*a*), *and his sons, one lame, a madman, an idiot, a blind man, and person afflicted with an incurable disease, and others* [*similarly disqualified,*] *must be maintained, excluding them, however, from participation.*"(1)

2. "An impotent person," one of the third sex. "Outcast;" one guilty of killing a Bráhmin and the rest. "His issue," the offspring of an outcast. "Lame;" deprived of the use of his feet. "A madman;" affected by any of the various sorts of insanity proceeding from air, bile, or phlegm, from delirium, or from evil spirits. "An idiot;" a person deficient in understanding, meaning one incapable of discriminating good from bad. "Blind;" destitute of the visual organ. "Afflicted with an incurable disease;" affected by an irremediable distemper, such as consumption or the like.

3. Under the term "others" are comprehended one who has entered into another order, an enemy to his father, a sinner in an inferior degree, and a person deaf, dumb, or wanting any organ. Thus Vasishṭha says, "They, who have entered into another order, are debarred from shares."(2) Nárada also declares, "An enemy to his father, an outcast, an impotent person, and an inferior sinner, take no shares of the inheritance even though they be legitimate: much less, if they be sons of the wife by an appointed kinsman." (3) Manu likewise ordains, "Impotent persons and outcasts are excluded from a share of the heritage; (*b*) and so are persons born blind and deaf as well as madmen, idiots, the dumb, and those who have lost a sense"(4).

4. Those who have lost a sense. Any person who is deprived of an organ [of sense or action] by disease or other cause, is said to have lost that sense.

5. Those persons are excluded from participation. They do not share the estate. They must be supported by an allowance of food and raiment only: and the penalty of degradation is incurred,

(1) Yájñavalkya ii. 141.
(2) Vasishtha, xvii. 52.
(3) Nárada, xiii. 21.
(4) Manu, ix. 201.

(*a*) Some hold that the expression "jatyandha badhirau" does not mean 'blind or deaf from birth' but incurably blind or deaf. But these are an inconsiderable minority. Blindness, deafness and dumbness entailing exclusion from inheritance should be incurable and congenital. (*Murarji* v. *Parvathi Bai*, I. L. R. 1, B. 177; *Hira Singh* v. *Ganga Sahai*, I. L. R. 6 A. 322). Lunacy need not be congenital (*Woma Pershad* v. *Grish Chunder*, I. L. R. 10, C. 66; *Deo Kishen* v. *Budh Prakash*, I. L. R. 5, A. 509; *Bodha Narain* v. *Om Rao*, 13. M. I. A. 519.)

(*b*) Under Act XXI. of 1850, mere loss of caste can no longer be a ground of exclusion from inheritance. (*Bhagavant Singh* v. *Kallu*, I. L. R. 11 A. 100).

if they be not maintained. For Manu says, "But it is fit, that a wise man should give all of them food and raiment without stint to the best of his power: for he, who gives it not, shall be deemed an outcast."§(1) "Without stint" signifies 'for life.'

6. They are debarred of their shares, if their disqualification arose before the division of the property. But one already separated from his co-heirs, is not deprived of his allotment.

7. If the defect be removed by medicaments or other means at a period subsequent to partition, the right of participation takes effect, on the same principle on which "When the sons have been separated, one, who is afterwards born of a woman equal in class, shares the distribution"(2) is based.

8. The masculine gender is not here used restrictively in speaking of an outcast and the rest. It must be therefore understood, that the wife, the daughter, the mother, or any other female, being disqualified from any of the defects which have been specified, is likewise excluded from participation.

9. The disinherison of the persons above described seeming to imply disinherison of their sons, the author adds:

"*But their sons, whether legitimate, or the offspring of the wife by a kinsman, are entitled to allotments, if free from similar defects.*(3)

10. The sons of these persons, whether they be legitimate offspring or issue of the wife, are entitled to allotments, or are rightful partakers of shares; provided they be faultless or free from defects which should bar their participation, such as impotency, &c.

11. Of these the impotent man may have issue of the wife; the rest may have legitimate progeny likewise. The specific mention of "legitimate" issue and "offspring of the wife" is intended to forbid the recognition of other sons.(a)

12. The author delivers a special rule concerning the daughters of disqualified persons: "Their daughters must be maintained likewise, until they are provided with husbands."(4)

13. Their daughters, or the female children of such persons, must be supported, until they be disposed of in marriage. Under the suggestion of the word "likewise," they should be married.

14. The author adds a distinct maxim respecting the wives of disqualified persons:

"*Their childless wives, conducting themselves aright, must be supported; but such, as are unchaste, should be expelled; and so indeed should those, who are perverse.*

(1) Manu, ix. 202.
(2) Yájñavalkya, ii. 123.
(3) *Ibid*, ii. 142.
(4) Yájñavalkya, ii. 141.
(5) *Ibid*, ii. 143.

(a) This seems to suggest that impotent persons and the like are not competent to make a valid adoption.

15. The wives of these persons, being destitute of male issue and maintaining an unobjectionable character, or behaving virtuously, must be supported or maintained. But, if unchaste, they must be expelled; and so may those, who are perverse. These last may indeed be expelled: but they must be supported, provided they be not unchaste. For maintenance must not be refused solely on account of perverseness.

SECTION XI.

On the separate property of a woman.

1. After briefly propounding the division of wealth left by the husband and wife, ("Let sons divide equally both the effects and the debts, after the death of their two parents."(1) the partition of a man's wealth has been described at length. The author, now intending to explain fully the distribution of a woman's property, begins by setting forth the nature of it:

"*What was given to a woman by the father, the mother, the husband or a brother, or received by her at the nuptial fire, or presented to her on her husband's marriage to another wife, as also any other* [*separate acquisition,*] *is denominated a woman's property.*"(2)

2. That, which was given by the father, by the mother, by the husband, or by a brother; and that, which was presented [to the bride] by the maternal uncles and the rest at the time of the wedding, before the nuptial fire; and a gift on a second marriage, or gratuity on account of supersession, as will be subsequently explained, ("To a woman whose husband marries a second wife, let him give an equal sum as a compensation for the supersession." 34) and also property which she may have acquired by inheritance, purchase, partition, seizure or finding, are denominated by Manu and the rest 'woman's property.'

3. The term 'woman's property' conforms, in its import, with its etymology, and is not technical: for, if the literal sense be admissible, a technical acceptation is improper.

4. As for the enumeration of six sorts of woman's property by Manu ("What was given before the nuptial fire, what was presented at the bridal procession, what has been bestowed in token of affection or respect, and what has been received by her from her brother, her mother, or her father, are denominated the sixfold property of a woman;"(3) it is intended, not as a restriction of a greater number but as a denial of a less.

5. Definitions of presents given before the nuptial fire, and so forth have been stated by Kátyáyana: "What is given to women at the time of their marriage, before the nuptial fire, is celebrated by the wise as women's property bestowed before the nuptial

(1) Yájñavalkya, ii. 118.
(2) *Ibid.* ii. 144.
(3) Manu, ix. 194.

fire. That, again, which a woman receives while she is conducted from her father's house is instanced as the property of a woman, under the name of gift presented in the bridal procession. Whatever has been given to her through affection by her mother-in-law or by her father-in-law, or has been offered to her as a return for her prostration, is denominated an affectionate present. That, which is received by a married woman or by a maiden, in the house of her husband or of her father, from her brother or from her parents, is termed a kind gift."(1)(a)

6. Besides [the author says,]

"That which has been given to her by her kindred: as well as her fee or gratuity or anything bestowed after marriage."(2)

What is given to a maiden by her kindred; by the relations of her mother, or those of her father. The gratuity, for the receipt of which a girl is given in marriage. What is bestowed or given after marriage, or subsequently to the nuptials.

7. It is said by Kátyáyana, "What has been received by a woman from the family of her husband at a time posterior to her marriage, is called a gift subsequent; and so is that, which is similarly received from the family of her father."(3) It is declared woman's property: for this passage is connected with that which had gone before.

8. A woman's property has been thus described. The author next propounds the distribution of it:

"Her kinsmen take it, if she die without issue."(4)

9. If a woman die "without issue;" that is, leaving no progeny, *i.e.* having no daughter, nor daughter's daughter, nor daughter's son, nor son, nor son's son; the woman's property, as above described, shall be taken by her kinsmen; namely her husband and the rest, as will be explained.

10. The kinsmen have been declared generally to be competent to succeed to a woman's property. The author now distinguishes different heirs according to the diversity of the marriage ceremonies. "The property of a childless woman, married in the form denominated Bráhma, or in any of the four [unblamed modes of marriage,] goes to her husband: but, if she leave progeny, it will go to her daughters: and, in other forms of marriage it goes to her father."](5)

11. Of a woman dying without issue as before stated, and who had become a wife by any of the four modes of marriage denominated Bráhma, Daiva, Ársha and Prájápatya, the property, as before described, belongs in the first place to her husband.

(1) II. Cole. Dig., 585, ccccIxiv-v, 586, ccccIxvi.
(2) Yájñavalkya, ii. 145.
(3) II. Cole. Dig., 587, ccccIxviii.
(4) Yajñavalkya, ii. 145.
(5) *Ibid*, ii. 146.
(a) Another reading is (from her husband) *Vide* Dayabhaga, ch. 4, s. 2, 21.

On failure of him, it goes to his nearest kinsmen (sapiṇḍas). But, in the other forms of marriage called Ásura, Gándharva, Rákshasa and Paisácha, the property of a childless woman goes to her parents, that is, to her father and mother. The succession devolves first on the mother, who is virtually exhibited in the elliptical phrase (pitrigámi) implying 'goes (gachhati) to both parents (pitarau;) that is, to the mother and to the father.' On failure of them, their next of kin take the succession.

12. In all forms of marriage, if the woman "leave progeny" that is, if she have issue, her property devolves on her daughters. In this place, by the term "daughters," grand-daughters are signified; for the immediate female descendants are expressly mentioned in a preceding passage: "the daughters share the residue of their mother's property."(1)

13. Hence, if the mother be dead, daughters take her property in the first instance: and here, where both married and unmarried daughters exist, the unmarried take the succession; but, on failure of them, the married daughters: and here again, where there exist both daughters who are provided for and those who are unendowed, the unendowed take the succession first; but, on failure of them, those who are endowed. Thus Gautama says: "A woman's property goes to her daughters unmarried, or unprovided"(2) or 'provided,' as is implied by the conjunctive particle in the text. "Unprovided" are such as are destitute of wealth or without issue.

14. But this applies to wealth other than the fee or gratuity. For that goes to brothers of the whole blood, conformably with the text of Gautama: "The sister's fee belongs to the uterine brothers after the mother."(3)

15. On failure of all daughters, the grand-daughters in the female line take the succession under this text;

"*If she leave progeny, it goes to her* [*daughter's*] *daughters.*"(4)

16. If there be a multitude of these [grand-daughters,] children of different mothers, and unequal in number, shares should be allotted to them through their mothers, as directed by Gautama: "Or the partition may be according to the mothers: and a particular distribution may be made in the respective sets."(5)

17. But if there be daughters as well as daughters' daughters a trifle only is to be given to the grand-daughters. So Manu declares: "Even to the daughters of those daughters, something should be given, as may be fit, from the assets of their maternal grandmother, on the score of natural affection." (6) (*a*)

(1) Yájñavalkya, ii. 118.
(2) Gautama, xxviii. 24.
(3) *Ibid* xxviii. 25.
(4) Yájñavalkya, ii. 146.
(5) Gautama, xxviii. 17.
(6) Manu, ix. 193.

(*a*) Whether grand-daughters are entitled to any share so long as a daughter exists is a question which has not come up for decision. We are not sure whether the analogy of the daughters' sons will not apply to daughters' darghters.

18. On failure also of daughter's daughters, the daughters' sons are entitled to the succession. Thus Nárada says: "Let daughters divide their mother's wealth; or, on failure of daughters, their male issue."(1) For the pronoun refers to the contiguous term "daughters."(a)

19. If there be no grandsons in the female line, sons take the property: for it has been already declared, "the [male] issue succeeds in their default."(2) Manu likewise shows the right of sons, as well as of daughters, to their mother's effects: "When the mother is dead, let all the uterine brothers and the uterine sisters equally divide the maternal estate."(3)

20. 'All the uterine brothers should divide the maternal estate equally; and so should sisters by the same mothers.' Such is the construction: and the meaning is not that 'brothers and sisters share together'; for union of both is not indicated, since the abridged form of the conjunctive compound has not been employed: but the conjunctive particle (cha) is here justifiable with reference to the mere fact that they divide; as in the example, 'Devadatta practises agriculture, and so does Yajñadatta.'

21. "Equally" is used (§ 19) to forbid partition with deductions. The whole blood is mentioned to exclude the half-blood.

22. But, though springing from a different mother, the daughter of a rival wife, being superior by class, shall take the property of a childless woman who belongs to an inferior class. Or, on failure of the step-daughter, her issue shall succeed. So Manu declares: "The wealth of a woman, which has been in any manner given to her by her father, let the Bráhmaṇí damsel take; or let it belong to her offspring."(4)

23. The mention of a Bráhmaṇí includes any superior class. Hence the daughter of a Kshatriyá wife takes the wealth of a Vaisyá.

24. On failure of sons, grandsons inherit their paternal grandmother's wealth. For Gautama says: "They who share the inheritance, must pay the debts"(5): and the grandsons are bound to discharge the debts of their paternal grandmother; for the text expresses "Debts must be paid by sons and sons' sons."(6)

25. On failure of grandsons also, the husband and other relatives above-mentioned are successors to the wealth.

26. While treating of woman's property, the author adds something concerning a betrothed;

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(1) Nárada, xiii. 2.
(2) Yájñavalkya, ii. 118.
(3) Manu, ix. 192.
(4) Manu ix. 198.
(5) Gautama, xii. 40.
(6) Yájñavalkya, ii. 50.

(a) The author of the Dayabhaga interprets the expression 'Tadanvaya' as meaning 'the mother's male issue,' making the pronoun stand for "mother." This is objected to as inaccurate, as the pronoun should not be made to stand for a remote antecedent while there is a more proximate one.

"For detaining a damsel, after affiancing her, the offender should be fined, and should also make good the expenditure together with interest." (1)

27. One, who has verbally given a damsel but retracts the gift, must be fined by the king, in proportion to the property or the offence and according to other circumstances. This is applicable, if there be no sufficient reason for retracting the engagement. But, if there be good cause, he shall not be fined, since retraction is authorized in such a case. "The damsel, though betrothed, may be withheld, if a preferable suitor present himself." (2)

28. Whatever has been expended, on account of the espousals by the bridegroom, for the gratification of his own or of the damsel's relations, must be repaid in full, with interest, by the affiancer to the bridegroom.

29. Should a damsel, anyhow affianced, die before the completion of the marriage, what is to be done in that case? The author replies:—

"If she die, let the bridegroom take back the gifts which he had presented, paying however the charges on both sides." (3)

30. If a betrothed damsel die, the bridegroom shall take the rings and other presents, or the nuptial gratuity, which had been previously given by him [to the bride]; "paying however the charges on both sides:" that is, clearing or discharging the expense which has been incurred both by the person who gave the damsel and by himself, he may take the residue. But her uterine brothers shall have the ornaments for the head, and other gifts, which may have been presented to the maiden by her maternal grandfather, or other relations; as well as the property, which may have been regularly inherited by her. For Baudháyana says: "The wealth of a deceased damsel, let the uterine brothers themselves take. On failure of them, it shall belong to the mother; or, if she be dead, to the father." (4)

31. It has been declared, that the property of a woman leaving no issue, goes to her husband. The author now shows, that, under certain circumstances, a husband is allowed to take his wife's wealth in her life-time, and although she have issue:

"A husband is not liable to make good the property of his wife taken by him in a famine, or for the performance of a duty, or during illness, or while under restraint." (5)

32. In a famine, for the preservation of the family, or at a time when a religious duty must indispensably be performed, or in illness, or "during restraint" or confinement in prison or under corporal penalties, the husband, being destitute of other funds and

(1) Yájñavalkya, ii. 147.
(2) *Ibid*, i. 65.
(3) *Ibid*, ii. 147.
(4) Attributed to Baudháyana but not found in his Institutes in the S. B. E. series or in Cole. Dig.
(5) Yájñavalkya, ii. 148.

therefore taking his wife's property, is not liable to restore it. But, if he seize it in any other manner he must make it good.

33. The property of a woman must not be taken in her life-time by any other kinsman or heir but her husband: since punishment is denounced against such conduct: ("Their kinsmen, who take their wealth in their life-time, a virtuous king should chastise by inflicting the punishment for theft:")(1) and it is pronounced an offence: "Such ornaments, as are worn by women during the life of their husbands, the heirs of the husbands shall not divide among themselves: they, who do so, are degraded from their caste."(2)

34. A present made on her husband's marriage to another wife has been mentioned as woman's property. The author describes such a present:

"*To a woman, whose husband marries a second wife, let him give an equal sum for the supersession, provided no separate property have been bestowed on her: but, if any have been, let him allot half.*"(3)

35. She is said to be superseded, over whom a marriage is contracted. To a wife so superseded, as much should be given on account of the supersession, as is expended for the second marriage: provided separate property had not been previously given to her by her husband, or by her father-in-law. But, if such property had been already bestowed on her, half the sum expended on the second marriage should be given. Here the word 'half' (*arddha*) does not intend an exact moiety. So much therefore should be paid, as will make the wealth, already conferred on her, equal to the prescribed amount of compensation. Such is the meaning.

SECTION XII.

On the evidence of partition.

1. Having thus explained partition of heritage, the author next propounds the evidence by which it may be proved in a case of doubt.

"*When partition is denied, the fact of it may be ascertained by the evidence of kinsmen, relatives and witnesses, and by written proof, or by separate possession of house or field.*"(4)

2. If partition be denied or disputed, the truth may be known and certainty be obtained by the testimony of kinsmen, relatives of the father or of the mother, such as maternal uncles and the rest, being competent witnesses as before described; or by the evidence

(1) Attributed to Nárada, but not found in his Institutes in the S. B. E. series.
(2) Manu, ix. 200.
(3) Yájñavalkya, ii. 149.
(4) *Ibid*, ii. 150.

of a writing, or record of the partition. It may also be ascertained by separate occupation of houses and lands.

3. The practice of agriculture or other business pursued apart from the rest, and the observance of the five great sacrifices and other religious duties performed separately are pronounced by Nárada to be evidences of a partition. "The religious duty of unseparated brothers is single. When partition indeed has been made, religious duties become separate for each of them."(1)

4. Other signs of separation are specified by the same author: "Separated, not unseparated brothers, may reciprocally bear testimony, become sureties, bestow gifts, and accept presents."(2)

(1) Nárada, xiii. 36-37.

(2) Nárada, xiii. 39.

THE VYAVAHARA MAYUKHA.

ON INHERITANCE, [DA'YA-NIRNAYA].

SECTION 1.

Of property or ownership, (Svatva).

1. Ownership is a help to the determination of heritable right- &c., and ownership is a kind of power produced by purchase, acceptance, &c. That ownership is produced by these is understood from the transactions of the world and not inferred from the Sastras, for such transactions are performed even by those unacquainted with the Sastras; besides it is a needless hypothesis to base them on the Sastras. Bhavanatha says the same thing in Nayaviveka.

2. As for the text of Gautama: "An owner is by inheritance, purchase, partition, seizure, or finding. Acceptance is for a Bráhmin an additional mode; conquest for a Kshatriyá; gain for a Vaisyá or Súdrá,"(1) it is only a reiteration of the causes of property already recognized as such in the world. For people in the world use the word *heritage* to denote that which becomes one's own by the mere loss of the owner's property therein. The word *mere* is used to exclude purchase, or acceptance and the rest. The word *riktha* denotes only such loss because of the enumeration of purchase, &c., as causes of property and also because of the maxim, that a word means only the distinguishing attribute of the object which it is intended to denote.

3. According to Dháresvara A'chárya: 'The ownership of sons and the rest, in the wealth of the father, is not generated previously during his life, but is produced by partition.' And the author of the Smriti Sangraha says the same. But it is not so; for, from the plain sense of this text: "Even by birth, ownership in wealth is obtained," and other similar ones, it is evident, that, ownership in the father's wealth depending on the filial relation, is generated even by the production of a son. And [the same results] from this text of Yájñavalkya: "For the ownership of father and son is the same, in land which was acquired by the grandfather, or in acorody, or in chattels which belonged to him."(2) And this does not mean, that the reason of the acquisition of ownership is found in the grandfather's death, and not in the production of a son, for [if it did], such ownership would be wanting, in case no grandson were to be born to him up to the time of his death. In this way, therefore, either the word *grandfather* is of no use [in the argument]: or it follows *a fortiori* [*prasaktek*] that there is no equal ownership in property acquired by the great-grandfather, and others. Besides it is an attribute of the object of the right.

(1) Gautama, x. 39—42.

(2) Yájñavalkya, ii. 121.

4. As for this text of Devala: "When the father is deceased, let the sons divide the father's wealth, for sons have not ownership, while the father is alive and free from defect:"(1) the first hemistich only lays down a rule as regards the time of partition, for the suffix shewing injunction is added to the word meaning *divide*. The latter half is commendatory of this injunction as to time. It only declares the sons' want of independence and does not negative their right. It is also made clear from this that the text of Sankha: "While the father lives, sons shall not divide the wealth: even if there should be afterwards an increase by them, still the sons are not independent in respect of worldly transactions and religious rites"(2) should be similarly explained. Here *dependence* is specified immediately, with a view more strongly to inculcate the foregoing prohibition. '*Even if by them subsequently*' be made, is the proper interpretation. *By them*, by the sons, subsequently to their birth. *Increase*, what is obtained by acceptance, or the like. The proposition briefly is this: 'If in property accepted by sons or other [heirs], their dependence [is clear] from the [father's] undisputed ownership, how [can we doubt their dependence] in property acquired by the father?'. And this dependence is in respect of partition, optional moral observances, industry, and the like. So also Hárita: "While the father lives, sons are not independent in regard to the receipt and alienation of wealth, to the partition of it, or to censure."(3) By the words *receipt* and *alienation*, transactions generally are meant. *Censure*, according to Madana, means, reproving of the slaves and other [household servants].

5. As for this text: "The father is master of all gems, pearls and corals; but neither the father nor the grandfather, is so of the whole immoveable estate,"(4) it also means the father's independence only in the wearing and other [use] of ear-rings, rings, [&c.], but not as far as gift or other [alienation]: neither is it to imply the cessation of the cause of his ownership on the production of a son. This very meaning is made manifest also by [the text] noticing [only] gems, and such things as are not injured by use. Even so, this text: "Though immoveables and bipeds have been acquired by the man himself, a gift or sale of them should not be made without convening all the sons,"(5) is only a prohibition against their gift, sale, or the like, not against the use of them.

6. Now the pre-existing undefined [joint] ownership of more than one brother or other [co-heir] is, by partition between them, defined and made apparent. On this point some say: "This [ownership] is some different property produced, by the destruction of the former ownership contained in the common property." But, justly speaking, since prolixity arises in considering the production of another ownership on the destruction of the former; therefore

(1) II. Cole. Dig., 196, v.
(2) *Ibid*, 199, vii.
(3) *Ibid*, 199, viii.
(4) Not found. Attributed to Yájñavalkya.
(5) Anonymous.

[separate] ownership, existing even originally from community [of interests], is discovered by partition, by the result furnishing separate substances or things.

7. To return to the subject: *Acceptance is for a Bráhmin an additional mode:* that is, according to some, 'What is obtained by acceptance, is the Bráhmin's additional [mode of] increase.' With reference to inheritance and the rest, this acceptance is for a Bráhmin alone, an additional mode. It results therefore, that *conquest* and the others are in like manner [additional] for Kshatriyás and the rest.

8. In conquest also, where the property of the conquered consists in houses, lands, money, or the like, there alone ownership is acquired by the conqueror; but in the revenues of the conquered, the conqueror possesses the same, but no property in them. Even so in the sixth [book of the Mimáṁsá]: "The whole earth must not be given away by the king of the world, neither a district by the ruler of that district." But the property in each village, house, or other [portion] of a whole country or a district of it, belongs solely to the owner of the soil [*bhumika*], &c. The revenue only belongs to the prince. Therefore, in gift, or other alienation of such lands as are here made mention of, a gift of the land is not brought about; we must only suppose a mere livelihood granted. But in purchases from the owner of the soil, even ownership accrues there whether houses, land, or other property. Then, indeed, the benefits of a gift of land also may be obtained from it.

9. Gain, [*Nirvishta*] is that which is acquired by usury, agriculture, commerce, tending of animals; and also what is acquired by service. From the dictionaries, we find the synonyms of 'Gain' to be, 'Hire,' and 'Enjoyment.' Hire, again, is defined to be service. Enjoyment, is usury and the rest. Here, the first mentioned [are sources of gain] to the Vaisyá class: the second [service] to the Súdrá class.

10. Now, the reason of sale and other transfer of property, is to be deduced solely from worldly motives. And in like manner, popular practice is established in the ownership of calves and other [produce] of a man's own cow, or the like: but it would not be so, if it depended on such means only as the law furnishes, because we do not learn from the law the means of distinguishing the produce of one's own cow or the like.

11. Yet, [an opponent may say]: 'There may be ownership in daughters, sons, or other issue of a wife, in the same way as there is in the produce of one's own cow; [and], a case of necessity being assumed, [for instance,] by the rule: "In a *Visvajit* sacrifice a man gives the whole of his possessions," the gift of everything being granted, the necessity hence arises for the gift of a daughter or son, and, therefore, your reasoning from the sixth book of the Mimáṁsá, that they are not to be given, will be at variance with such rule.'

12. [I answer] No; because there being no such property in a wife as there is in a cow or the like, there cannot be any property in the children produced from her: And in a worldly sense, the reason of ownership is determined, solely by the production of that which contains the principles of ownership. Neither can it be said, that property may also exist in wives, from acceptance [in marriage]; for then, by reason of the absence of property possessed by Kshatriyás and the other [two classes in] their wives, from their want of the [right of] acceptance, there is also a want of it [property] in their issue.

13. Therefore, since the text: "This law is propounded by me in regard to sons equal by class,"(1) restricts the taking of an adopted son solely to one equal in class; and since with respect to Kshatriyás and the rest, acceptance of an adopted son is even secondary; then also with respect to Bráhmins, it is not the principal mode; because it is contrary to reason to have two contrary, but connected, explanations of performing one and the same rite.

14. Neither can it be said that a Bráhmin alone is entitled to the rite of accepting a son, and that a Kshatriyá is not entitled, since we know that the right does pertain to them, from the following and other texts of Saunaka and others: "A daughter's son as well as a sister's son, are affiliated by Súdrás."(2) Even so, in the marriage of a Bráhmin with the daughter of a Kshatriyá or other [lower class], by the Bráhma rite, the secondary rank must be admitted, both for the gift and the acceptance, otherwise they are principal. Thus two explanations [of the same rite] are [here again] opposed. As regards Kshatriyás, the admissibility of all to Bráhma nuptials and the rest is not questioned by any. Even so Misra in the Tantra Ratna has said: 'The gift of sons and the rest is inferior [or secondary].'

15. Neither are we to suppose [absolute] property, merely because the laws of language [admit the expression], 'own wife, son, daughter'; for in the same way as we say 'own father,' 'own mother,' and the like, the expression also arises in speaking of kindred. If so, the power of the word 'own,' might likewise affect the term *kindred*, in for in dictionaries we find: "The pronoun *own* when not feminine stands for *wealth*; in *soul* [it is masculine]; in *kindred*, it is [common to] three [genders]; and in the expression *peculiar wealth*, it is neuter."

16. However, since in the sixth book of the Mimámsá, gift of a slave born in the family is mentioned, this point is open to question. Since property in the mother is wanting, from absence of the complete power of gift, acceptance, purchase, sale and the like, then in the household-slave begotten on her, there is also an absence of the power, from the impropriety of it. So much for this incidental reference.

(1) Yájñavalkya, ii. 133. (2) Not found in Cole. Dig.

SECTION II.

Of heritage.—(Dayá.)

1. Wealth not re-united, nor put back again into a common stock, and admitting of partition, is Heritage. By *not re-united*, I mean to exclude wealth united for purposes of gain or the like, because the term 'partition of heritage,' does not apply to dividing of what is thrown together by merchants. In like manner we must also exclude re-united property, in the sense in which that term will hereafter be defined. Even as [we find] in the Smriti Sangraha: "That which is received through the father, and that received through the mother, is described by the term *Heritage*: The partition of it is now related." And in the Nighantu, it is said: "The learned define heritage to be, wealth of a father, which admits of partition." The word *father* is merely used to denote relation in general.

2. This heritage is of two kinds, obstructed and unobstructed. When the life of the owner of the property, or that of his sons, &c., is interposed, that is termed obstructed; for instance, the wealth of paternal uncles, and the like. But where ownership accrues to sons and others solely from affinity to the owner, without reference to other means of acquiring property, the heritage is then unobstructed, as the wealth of a father. This is the definition of heritage.

SECTION III.

Of the partition of heritage.—(Dáya-Vibhága.)

1. This Nárada declares: "Where a division of the paternal estate is instituted by sons, that becomes the department of law called by the wise, partition of heritage."(1) The word *sons* indicates also grandsons, and the rest. And in the same way, by *paternal* is indicated that of the grandfather and the rest. But Madana has the very words, 'of a father and the rest.' And this definition, of 'partition of heritage,' has been declared.

2. Even when there is a total failure of common property, a partition may also then be made, by the mere declaration, 'I am separate from thee'; for, a partition merely indicates a state of the mind. Transactions relating to partition are only declaratory of this mental state.

(1) Nárada, xiii. 1.

SECTION IV.

The periods of partition.—(Vibhága-Kála.)

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1. Manu: "After the death of the father and mother, the brothers, being assembled, may divide among themselves the paternal [and maternal] estate; for they have no power over it, while their parents live."(1) Even by inserting the word *and*, the concurrence of [both their] deaths is not required. Even thus, in the Madana Ratna and the Smriti Sangraha: "A partition of the father's wealth may take place, even whilst the mother lives, for this reason, that without her husband, the mother does not from her independence derive ownership." "A partition of the mother's wealth also may take place, in like manner while the father is alive, for, if there be issue the lord [of the wife] is not lord of the wife's wealth."

2. This is opposed to a text of Brihaspati: "On the death of both parents, participation among brothers is allowed: and even while they are both living it is allowable, if the mother be past child-bearing."(2) Nárada says: "Let sons regularly divide the wealth, when the father is dead; or when the mother is past child-bearing and the sisters are married; or when the father's sensual passions are extinguished, or when the father's attachment to worldly objects has ceased."(3) *Sensual passions*, desire. *When his sensual passions are extinguished* means when he is free from desire; *and the sisters are married* must be read with each of the previous conditions on the analogy of the crow's eye.(*a*)

3. Gautama: "After the death of the father, let sons share his estate. Or, while he lives, and the mother be past child-bearing, if he desire partition."(4) From this expression, *if he desire*, partition is declared legal also before the mother is past child-bearing, if done with the father's wish alone.

4. Brihaspati declares the legality of partition in some cases without his wish; "The father and sons are equal sharers in houses, and lands, descended regularly from ancestors: but sons are not worthy of a share in wealth acquired by the father himself, when the father is unwilling."(5) From which it results, that sons are worthy of a share in property, acquired by the grandfather, &c., even though the father do not wish it.

5. In the grandfather's property also, partition in some cases depends on the father's pleasure, say Manu and Vishṇu: "And if a

(1) Manu, ix. 104.
(2) Brihaspati, xxv. 1.
(3) Nárada, xiii. 2-3.
(4) Gautama, xxviii. 2.
(5) Brihaspati, xxv. 2.

(*a*) *After the simile of the crow's eye.* The Hindus believe that the crow has only one visual organ and that it looks both ways with the aid of this one organ. Hence the expression means "Both ways—"

father by his own efforts, recover property which could not be recovered before [by his father], he shall not, unless by his free will, divide it with his sons, as in fact, it was acquired by himself."(1) Brihaspati: "Over the grandfather's property, which has been seized [by strangers], and is recovered by the father through his own ability, and over [anything] gained by him by learning, valour, or the like, the father's full dominion is ordained. He may give it away at his pleasure, or he may defray his consumption with such wealth."(2)

6. Nárada: "A father who is afflicted with disease, or influenced by wrath, or whose mind is engrossed by sensuality or who acts otherwise than as the law permits, has no power in the distribution of the estate."(3) Hárita: "If the father be free from desire, old, perverted in mind, or afflicted with a chronic disease, partition of his wealth may be made."(4) *Free from desire*, according to the Madana Ratna, means, without desire of partition. *Perverted in mind*, following practices contrary to law. The meaning is, that partition may be made, even against the will of [such a] father.

7. Hárita says, that when the father is incapable, partition takes place by the concurrence of the eldest son: "But if he be decayed, remotely absent, or afflicted with disease, let the eldest son manage the affairs as he pleases."(5) Sankha and Likhita say: "If the father be incapable, let the eldest son manage the affairs of the family, or, with his consent, the next brother conversant with business."(6) *The next*, the one born after him. Partition at the pleasure of one capable of the maintenance and other [care] of the family [is intended]. From this it results that if all be so [qualified], it is allowable at any one's option.

8. Yájñavalkya: "When the father makes a partition, let him separate his sons [from himself] at his pleasure, and either give the eldest the best share, or [if he choose], all may be equal sharers."(7) Optional partition alone [is denoted] by the last hemistich; since the dependence of the will in the two cases mentioned, has been above declared, from the impropriety of independence; and further from the inconsistency which would result in such construction of the text: For then he might give to one a lakh of rupees; to another single kaurì; to a third, nothing at all; which would result in the uncertainty of the law. A distinction in the share of the eldest, is noticed by Manu; "The portion deducted for the eldest, is a twentieth part of the heritage, with the best of all the chattels; for the middlemost, half of that, or a fortieth; for the youngest, a quarter of it, or an eightieth. But, if there be no deduction, the shares must be distributed in this manner:

(1) Manu, ix. 209.
(2) Brihaspati, xxv. 12 and 13.
(3) Nárada, xiii. 16.
(4) Not found.
(5) II. Colc. Dig., 199, viii.
(6) *Ibid*, 203, xvii.
(7) Yájñavalkya, ii. 114.

Let the eldest have a double share, and the next born, a share and a half, if they clearly surpass the rest in virtue and learning; the younger sons must have each a share: if all be equal in good qualities, they must all take share and share alike."(1)

9. Between twins, the birthright of the one first born is thus declared by Manu: "The right of invoking Indra by the texts, called *Subráhmanyás*, depends on actual priority of birth; and of twins also, the eldest is he, who was first actually born. Among twins, to him whose face kinsmen first see after his birth, belong the status of male offspring, and primogeniture."(2)

10. However, in the Pinda Siddhi and other medical books the right of primogeniture is awarded to the subsequent born This is over-ruled by the above [texts] in the matter at issue, because it has no foundation in the srutis, such as: "Purification ensues after a month." However, the right of primogeniture of the subsequent-born is declared in the Bhágavata, in the following text and the like: "When a double fœtus is conceived, the latter conception is that first brought into the world." [But] this doctrine is also opposed to the above texts and in the Puránas, many practices are disclosed, contrary to the written law. According to some, the question ought to be decided by a reference to the customs of the country. But what was stated at first, is the proper doctrine.

11. And this partition by deduction, is not respected in the Kali age, for it is one of the things forbidden in the present age, as has been already proved by me in my Samaya Mayúkha.

12. Nárada allows the father a double share: "Let the father, making a partition, reserve two shares for himself."(3) This text applies to the father of an only son. For in the Madana Ratna is this of Sankha and Likhita: "If there be one son, let [the father] himself reserve two shares, and the best of the slaves and cattle."(4) The word *one* signifies the most excellent. By the author of the Amara Kosa, 'chief,' 'other,' 'only,' are declared the synonyms of *one*. All these, according to the Párijáta, denote a son well qualified.

13. Brihaspati, however, declares the father's right to only an equal share with his sons, even if there be only one, in property acquired by the grandfather: "In wealth acquired by the grandfather, whether it consist of moveables or immoveables, the equal participation of father and son is ordained."(5) Yájñavalkya says: "For the ownership of father and son is the same, in land which was acquired by the grandfather, or in a corody, or in chattels."(6) Kátyáyana: "When the father and the sons divide the common wealth, in equal shares, it is called a legal partition."(7)

(1) Manu, ix. 112, 116, 117.
(2) *Ibid*, ix. 126.
(3) Nárada, xiii. 12.
(4) II. Cole. Dig., 216. xliv.
(5) Brihaspati, xxv. 3.
(6) Yájñavalkya, ii. 121.
(7) Not found.

14. As for this text of Yájñavalkya: "A legal distribution, made by the father, among sons separated with greater or less shares, is pronounced valid;"(1) according to Madana, Vijñánesvara and others, it means, 'if the [distribution], made by the father be legal, it cannot be set aside.' This text again of Nárada: "For such as have been separated by the father with equal, greater, or less, allotments of wealth, that is a lawful distribution: for the father is lord of all,"(2) relates to former ages.

15. In a case of equal partition between a father and his sons, a share belongs also to the wife; says Yájñavalkya: "If he make the allotments equal, his wives, to whom no separate property had been given by the husband or the father-in-law, must be rendered partakers of like portions."(3) If any had been given, they are only to get half, for he adds: "Or if any had been given, let him assign the half."(4) *The half;* meaning, so much as, with what had been before given as separate property [stridhana], will be equal to a son's share. But if her property be [already] more than such share, no share [belongs to her].

16. The same author speaking of the want of wish to participate, in the case of a son able to earn, and not desiring a share says: "The separation of one who is able to support himself, and is not desirous of participation, may be effected by giving him some trifle."(5) According to the Mitákshará it means that: 'Any thing whatever may be given, for the sake of preventing the desire being entertained by his sons, of claiming [a share of] the heritage.'

17. An equal partition, after the death of the father, is declared in another Smriti: "Let sons divide equally both the effects and the debts, after [the death of] both parents." Hárita: "When the father is dead, the partition of the inheritance should be made equally."(6)

18. Yájñavalkya: "Of heirs dividing after the death of the father, let the mother also take an equal share."(7) Vishṇu: "Mothers receive allotments according to the shares of sons."(8) In another Smriti [it is said:] "A mother, if she be dowerless, shall, in a partition by sons, take an equal share." The meaning is, that if she have dower, she shall take only so much as, with that dower, will make her an equal sharer with her sons. But no share [belongs to her] if her property be more than such share.

19. Vyása allows the [right to] share, even of a stepmother, and the paternal grandmother: "Even childless wives of the father are pronounced equal sharers; and so are all the paternal grandmothers: they are declared equal to mothers."(9) From this [word] *all,* the step-grandmothers also are to be included.

(1) Yájñavalkya ii. 116.
(2) Nárada, xiii. 15.
(3) Yájñavalkya, ii. 115.
(4) *Ibid,* ii. 148.
(5) Yájñavalkya, ii. 116.
(6) Anonymous.
(7) Yájñavalkya, ii. 123.
(8) Vishṇu, xviii. 34.
(9) II. Cole. Dig., 243. lxxxiv.

20. Yájñavalkya declares the mode of partition among the sons of different brothers: "Among grandsons by different fathers, the allotment of shares is according to the fathers."(1) It means that if there be one son of one, two sons of a second, three of a third [or the like,] their shares will be solely according to the number of the fathers, and not by the number of the sharers themselves.

21. Kátyáyana: "Should a younger son die before partition, his share shall be allotted to his son, provided he had received no fortune from his grandfather. That son's son shall receive his father's share from his paternal uncle, or from his [uncle's] son; and the same share shall be allotted to all the brothers according to law. Or his son takes the share; beyond him succession stops."(2) The *younger son* [*anuja*] denotes also the eldest. *Stops, i.e.*, at the great grandson.

22. We must thus understand it: 'The son of the great-grandson, and the rest will not, on the death of the father, grandfather, and great-grandfather, without interval after the death of the great-great-grandfather, obtain his wealth, being of another [line], so long as his son, or other [heirs] are alive. In default of son, grandson, and great-grandson in the general [family] only, he also will take.'

23. And this does not refer to an undivided family, but to a re-united one. For it is said by Devala: "Partition of heritage among undivided parceners, and a second partition among divided relatives living together, shall extend to the fourth in descent: this is a settled rule."(3) And "Be it debt, or a written contract; or a house, or arable land, descended from his grandfather, he shall take his due share of it, when he returns, even though he had been very long absent in a foreign country. If a man leave the common family and reside in another province, his share must undoubtedly be given to his male descendants when they appear."(4) It means: 'between the great-great-grandfather, and his sons, separated when in a state of union, and re-united.'

24. This refers to those residing in the same country; because, where they reside in different countries, it will descend even to the fifth, as is declared by Brihaspati in treating of residence in other lands. "Be he the third person, or the fifth, or even the seventh, he shall receive the share that gradually descends to him, on full proof of his birth and family-name."(5)

25. Brihaspati declares a partition in some cases according to the mothers: "If there be many [sons] sprung from one [father], alike in number, and in class, but born of rival mothers, partition must be made by them according to law, by the allotment of shares

(1) Yájñavalkya, ii. 120.
(2) II. Cole. Dig., 241, lxxix.
(3) *Ibid*, 242, lxxxi.
(4) Brihaspati, xxv. 23, 24.
(5) *Ibid*, xxv. 25.

to the mothers."(1) Vyása: "If there be many sons of one man, by different mothers, but equal in number, and alike by class, a distribution among the mothers, is approved."(2)

26. Brihaspati gives this opposite example: "Among brothers, who are equal in class but vary in regard to the number, the shares of the heritage are allotted according to the males."(3)

27. Yájñavalkya states a partition among sons of different classes: "The sons of a Bráhmin, in the several classes, have four shares, or three or two, or one; the children of a Kshatriyá have three portions, or two, or one; and those of a Vaisyá take two parts, or one."(4) *The sons of a Bráhmin*, that is, born to him of a Bráhminí, a Kshatriyá, a Vaisyá, and a Súdrá. Those of a Kshatriyá, those born to him of a Kshatriyá, a Vaisyá and a Súdrá Those of a Vaisyá, those born to him by a Vaisyá and a Súdrá.

28. Brihaspati: "Land, obtained by acceptance of donation, must never be given to the son of a Kshatriyá, or other wife of inferior tribe: even though his father give it him, the son of the Bráhmaní may resume it when his father is dead."(5) Devala: "The son begotten on a Súdrá woman by any man of a twice-born class, is not entitled to a share of land: but one begotten on her, by one of equal class, shall take all the property: thus is the law settled."(6) *Of land*, acquired by purchase, and the other modes also. Yet he does obtain a share of the [moveable] wealth.

29. But the son by a Súdrá woman, not legally married, does not obtain a share, even of the moveable property. Thus Manu: "The son of a Bráhmin, a Kshatriyá, or a Vaisyá, by a woman of the servile class, shall inherit no part of the estate; whatever his father may give him, let that be his own."(7)

30. Brihaspati declares this distinction in the case after the father's death: "The virtuous and obedient son, born of a Súdrá woman to a man who has no other offspring, should obtain a maintenance; and let kinsmen equally take the residue of the estate."(8) Gautama: "A son by a Súdrá woman, born unto a man who leaves no legitimate offspring, shall, if he be strictly obedient like a pupil, receive a provision for his maintenance."(9) *A provision, for his maintenance*; or, 'as a means of livelihood.'

31. The same author: "Sons termed *Pratiloma* [shall have an allotment] similar to that of the son produced by a woman of the servile class."(10) *Sons termed Pratiloma*, meaning, those produced by a woman, higher than the begetter in respect of caste.

32. Yájñavalkya states a distinction with regard to a son begotten by a Súdrá on a woman not married to him: "Even a son

(1) Brihaspati, xxv. 16.
(2) Not found.
(3) Brihaspati, xxv. 16.
(4) Yájñavalkya, ii. 125.
(5) Brihaspati, xxv. 30.
(6) Not found.
(7) Manu, ix. 155.
(8) Brihaspati, xxv. 31.
(9) Gautama, xxviii. 39.
(10) *Ibid*, xxviii. 45.

begotten by a Súdrá on a female slave, may take a share, by the father's choice. But if the father be dead, the brothers should make him partaker of the moiety of a share."(1) *Choice*, the pleasure of the father. From the expression *by a Súdrá*, it is clear that a son begotten by a twice-born man on a female slave does not obtain a share, even by the father's choice. Neither after the death of the father, will he get the half; nor, in the absence of sons or other [heirs], will he get the whole. This is the argument of the Madana Ratna, and others.

33. A distinction is thus declared by Gautama respecting a son born after partition: "One born [to a man] separated [from his sons] will alone take the father's [wealth]." Brihaspati: "All the wealth, which is acquired by the father himself, who has made a partition with his sons, goes to the sons begotten by him after the partition: those born before it, are declared to have no right. As in the wealth, so in the debts likewise, and in gifts, pledges, and purchase, they have no claims on each other except for acts of mourning and libations of water."(2) If there be nothing but debts, then that [son] is not even bound to pay those debts, without receiving a share from those formerly separated; for, as will afterwards be shewn, "He who takes the estate, must be made to pay the debts."

34. But if any one of them have re-united [with the father], a partition with that [son born after partition] shall be made. As is declared by Manu: "A son born after a division, shall alone take the paternal wealth: or he shall participate with such of the brothers as are re-united with the father."(3)

35. Yájñavalkya states a distinction, at a partition after the father's death, with respect to a son born immediately afterwards, of a mother, or step-mother, or brother's wife, whose pregnancy was not known: "When the sons have been separated, one who is [afterwards] born, of a woman equal in class, shares in the distribution."(4) The partition is to be thus effected: Something is to be contributed by all the brothers or others [who had previously shared], each something out of his own share, until the [posthumous son's] share is equal to their own. Vishṇu: "Sons with whom the father has made a partition, should give a share to the son born after the distribution."(5)

36. And this we must understand as allowing for expenses and income. For if it be so, then, says the same author: "His allotment must absolutely be made, out of the visible estate, corrected for income and expenditure."(6) *Out of the visible estate*, out of the wealth actually forthcoming.

37. At the time of a partition among brothers, this distinction is noted by Vasishtha: "Partition of heritage [takes place]

(1) Yájñavalkya, ii. 133, 134.
(2) Brihaspati, xxv. 19, 20.
(3) Manu, ix. 216.
(4) Yájñavalkya, ii. 122.
(5) Vishṇu, xvii. 3.
(6) Yájñavalkya, ii. 122.

among brothers, [having waited] till after the delivery of such of the women as are childless [but pregnant]."(1) *Having waited* should be supplied.

38. A further distinction in a partition after death of the father, is stated by Brihaspati: "For younger brothers, whose investiture and other ceremonies have not been performed, their elder brothers shall perform them, out of the aggregate wealth of the father."(2) The term *yavíyasah* is substituted for *yaviyámsah*, after the manner of the Vedas, by omitting the regular inflection [*num*] and the prolongation of the vowel [*dirgha*].

39. The mention of *brothers*, brings in the sisters also. Even so the same author: "And those unmarried daughters must be married by their eldest brother, even out of the father's wealth, according to law."(3)

40. Yájñavalkya [premising]: "Uninitiated brothers should be initiated by those, for whom the ceremonies have been already completed:"(4) states a distinction in regard to marriage of sisters: "But sisters should be disposed of in marriage, giving them as an allotment, the fourth part of a brother's own share;"(5) meaning, that a fourth part of such share as would be allotted to a son of the same class as the sister being given to each sister they are to be initiated.

41. For the sake of consistency in deciding upon taking the heritage, Yájñavalkya gives this [detailed] description of sons principal and secondary: 1st, The legitimate son, [*aurasa*] is one procreated on the lawful wedded wife: 2nd, Equal to him is the son of an appointed daughter [*putriká*]: 3rd, The son of the wife, [*kshetraja*] is one begotten on a wife by a sagotra or other kinsman of her husband: 4th, One secretly produced in the house is a son of hidden origin: 5th, A damsel's child, is one born of an unmarried woman: he is considered as the son of his maternal grandsire: 6th, A child begotten on a woman whose [previous] marriage had been consummated or not, is called the son of a twice-married woman: 7th, He whom his father or his mother gives in adoption, shall be considered as a son given [*dattaka*] 8th, A son bought, is one who was sold by his father, and mother: 9th, A son made, is one adopted by the man himself (without a gift) or sale: 10th, One who gives himself, is self-given: 11th, A child, accepted while yet in the womb, is one received with a bride: 12th, He who is taken for adoption, having been forsaken by his parents, is a deserted son."(6)

42. The *legitimate son*, born of a woman of equal class, and lawfully married, is the principal.

43. The *son of an appointed daughter*, is of two kinds: Of which the first is thus explained by Vasishṭha: "This damsel, who

(1) Vasishṭha, xvii. 41.
(2) Brihaspati, xxv. 21.
(3) Not found.
(4) Yájñavalkya, ii. 124.
(5) *Ibid*, ii. 124.
(6) *Ibid*, ii. 128—132.

has no brother, I give unto thee, decked with ornaments: the son, who may be born of her shall be my son."(1) And the other [kind] is thus noticed by the same: "The appointed daughter is considered to be the third [description of sons]."(2) In this case, the father's obsequies and the like, are to be performed by the [appointed] daughter alone.

44. *The son of the wife*, is one begotten on the wife of a brother or other [relative dying] without male issue, under the order of the eldest brother by (his) younger brother, or other relative [as the case may be], being of the same lineage.

45. The *son of a twice-married woman* is he who is produced of the second marriage of a woman, whether a virgin unenjoyed by her first husband, or whose first marriage had been consummated.

46. Here we must mark, that with the exception of the given son, [all the other ten] secondary sons are set aside in the kali or present age, for we read, in the prohibitions of it: "The acceptance likewise of affiliations, other than those of a legitimate and an adopted son."

SECTION V.

On the adopted son.

1. Manu says: "He is called a son given (*dattrima*) whom his father or mother affectionately gives as a son, being alike [by class], and in a time of distress, confirming the gift with water." According to Madana: "The disjunctive 'or' means that if the mother be not present, the father alone may give him away; and if the father be dead, the mother the same; but if both be alive, then even both." From his using the word 'in distress,' (it seems that) if not in distress, he must not be given.

2. Vijñánesvara says,: 'This prohibition regards the giver only as affecting the person, and not the religious ceremony [kratvártha]. But it is not so; this prohibition from this text contributing to the invisible result should be regarded as affecting the religious ceremony; even if the prohibition regarded some visible result, still as some invisible result should necessarily be premised as following the religious ceremony, the transgression of this prohibition will bar such invisible result. The use of the expression "in distress," according to some is not to prohibit the giving of the son in no distress, because that would be making it a *parisankyá* rule which is liable to the objection that the true sense of the expression is given up: it simply means that distress is a cause of such giving. It may be objected that this would make the gift

(1) Vishṇu, xvii. 17. (2) Vishṇu, xvii. 15.

obligatory in distress. But this objection has no force, as the object of this text is to define a *dattrima* son and not to lay down a rule about adoption.

3. Moreover, the assertion made by him [Vijñánesvara] in his chapter on marriage that: 'In transgressing the prohibition against sickly brides, and the like, it is merely an opposition to a manifest object, whilst the state of a lawful wife is superinduced notwithstanding,' is by the above argument overruled.

4. *Alike*, according to Medhátithi, means, 'not by class, but by qualities suitable to the family': accordingly, a Kshatriyá, or a person of any other inferior *class*, may be the given son [dattaka] of a Bráhmaṇa, etc. But Kulluka Bhatta says, it means "equal in *class*," and this is correct; for Yájñavalkya, after enumerating the twelve sorts of sons, in this way: "The legitimate son is one procreated on the lawful wedded wife:" &c., says: "This law is propounded by me in regard to sons equal by class." And this will be made clear by two texts of Saunaka, to be cited hereafter [para. 9]. Vijñánesvara also declares the same: "By the eldest son, as soon as born, a man becomes the father of male issue"; 'for the eldest chiefly fulfils the office of a son, and is therefore not to be given.' And this prohibition also regards the giver only, and not the taker, according to the same authority.

5. This prohibition might indeed apply to the giver alone, provided this text of Manu contained a prohibition of the gift of an eldest son. But it does not, for there is a want of authority and because the expression, *becomes the father of male issue*, is a declaration of parentage alone and moreover that even, as regards its applicability to the discharge of debt alone. Accordingly, the last hemistich exactly agrees with this interpretation: "And (the father) is exonerated from debt to his ancestors; such a son therefore is entitled to take the whole."(1) *The whole*, of the wealth.

6. And a male child alone becomes adopted, not a female. "He [*sah*] is called a son given." From the pronoun *he*, used in the text, [being masculine, and] referring to connexion between name and person, we must understand one, 'where a mother and father are agents, where affection, water, and proper qualifications exist, with necessity as a reason, and where the act of gift, equality of class, and male sex [are united],' in the same way as, from the [masculine] pronoun *him*, in the holy text: "Let a Bráhmin of eight years be initiated, and let *him* [*tam*] be instructed," we infer, that 'the age is eight years; the order, that of a Bráhmin; and the sex, male; his initiation with the string completed,' &c.

7. From this results the refutation of what some persons have held, *viz*: 'That the terminations *ktri*, and *mam* being common to all genders, the word *dattrima* ending in *mam* means one who

(1) Manu, ix. 106.

has been given away; therefore it may be applied in like manner even to a girl, when given, whether to her husband or to any other.'

8. Saunaka thus declares the mode of adopting a son: "I, Saunaka, now declare the best adoption: One having no male issue, or one whose male issue has died, having fasted for a son; having given two pieces of cloth, a pair of ear-rings, a turban and a ring for the forefinger, to a priest religiously disposed, a follower of Vishṇu, and thoroughly read in the Vedas; having venerated the king and virtuous Bráhmaṇas, by a *madhuparka*, both a bunch of sixty-four stems entirely of the kusa grass, and fuel of the palása tree also; having collected these articles; having earnestly invited kinsmen and relations, having entertained the kinsmen with food, and especially Bráhmaṇas; having performed the rites, commencing with that of placing samit over the consecrated fire, and ending with that of purifying the ghee: having advanced before the giver, let him cause to be asked thus, 'give the boy.' The giver, being capable of the gift, [should give] to him with the recitation of the five prayers, the initial words of the first of which are *Ye yájñyena*, &c. Having taken him by both hands, with recitation of the prayer, commencing, "*Devasya tva*, &c;" having inaudibly repeated the mystical invocation, *Angád ange*, &c.; having kissed the forehead of the child:—having adorned with clothes, and so forth the boy bearing the reflection of a son, accompanied with dancing, songs, music and benedictory words, having seated him in the middle of the house: having according to ordinance, offered a burnt offering of milk and rice, [to each incantation,] with recitation of the mystical invocation, '*Yastvá hrida*', the portion of the Rigveda commencing, '*tubhyam agne*', and the five prayers, of which the initial words of the first are *somodadat*, &c., let him close the ceremony after performing Svishtakrut and other homas."

9. "The adoption of a son, by any Bráhmin, must be made from amongst sapiṇḍas, or kinsmen connected by an oblation of food, or on failure of these an asapiṇḍa, or one not so connected, may be adopted: otherwise, let him not adopt. Of Kshatriyás, in their own class positively: and even in the gotra of the Guru: Of Vaisyás from amongst those of the Vaisyá class [Vaisyajáteshu]; of Súdrás from amongst those of the Súdrá class. Of all, and the classes likewise, in [their own] classes only: and not otherwise. But a daughter's son, and a sister's son are affiliated by Súdrás:" "By no man, having an only son [ekaputra] is the gift of a son to be ever made. By a man having several sons [bahuputra] such gift is to be made, even at some difficulty. Let the Bráhmin to the extent of his ability, bestow a gratuity on the officiating priest. A king half even of his dominion: next in order, a Vaisyá three hundred coins; a Súdrá, the whole even of his property: if indigent, to the extent of his means." *Bearing the reflection of*, equal to.

10. *A daughter's son and a sister's son:* Now, as in the instance of the stick, in the passage, "[The sacrificer,] delivers the stick to Maitrá Varuṇa:" though the stick [really] be the object required, from the necessity of its previous existence, still, by the use of the fourth case [*i.e.*, to], Maitrá Varuṇa is alone denoted as the object, as is the most fit, from his act of uttering the summons in the formula: "The holder of the stick then utters the invocations," even so, in this place, since the state of non-release from debt [results from want of a son], and because the sixth case [of Súdrás, in the text] has the sense of the fourth [*i.e.*, to or for] therefore both the daughter's and the sister's sons alone, are to be admitted for Súdrás, as the means [of relieving the father from debt]. So as these two only are the persons to be adopted (*vidheya*) the purport of the restriction of the rule is declared thus: "The daughter's son and the sister's son alone are for Súdrás." But if the impossibility of it for Súdrás [be urged], by reason of the impropriety of the restriction, [I answer], they are both exhibited by the texts as the objects for Súdrás alone since it would be absurd to make the restriction apply to the agent, [parisaṅkhyá] in respect to Bráhmins and the rest.

11. Therefore the daughter's son, and the sister's son alone, are the most proper for Súdrás: in default of them, another also, if of similar class, as declared by the same author [para. 9]: "Of Súdrás from amongst those of the Súdrá class." This word, *class*, is not [necessarily implied] by its connexion with 'daughter's son and sister's son,' alone, for there is no mutual connection between the states of 'daughter's son, sister's son, and common caste:' And there is a risk of our rendering useless the general proposition in the same Smriti. This is fully explained by my father in his Dvaita Nirnaya, and the same is the practice of the virtuous.

12. And the assertion of their right being demonstrable in the very same way, as [the argument upon] the word *Nishádasthapati*(*a*) the assertion in the Súddhi Viveka, that 'there is a want of title in Súdrás to celebrate the acceptance of a son with a homa authenticated by Vedic mantras,' is hereby refuted.

13. The homa, however, being accompanied with mantras, must be performed by them through the instrumentality of a Bráhmin, in conformity to the text of Parásara: "When fasts, vows, burnt offerings, ablution at a tírtha, silent meditation, or prayer and the like, are performed by a Bráhmin, the benefit of them accrues to him who caused their performance." And the very same is declared, both by Smárta and Harinátha.

14. However, what Parásara himself adds: "The Bráhmin who, for the sake of dakshiṇá, performs homa with sacrificial

(*a*) This is the topic of discussion in Jaimini's Mimámsá 'Chap. 6. 1st Pada. 51st Aphorism. Having to determine the meaning of the compound word *Nishadasthapati* i.e. whether it means 'the king of the Nishadas' or 'the king who is a Nishada,' the latter meaning is declared correct, and in answer to the objection that one of the Nishada class is not competent to perform a sacrifice, it is answered that the text itself in which the word occurs confers that authority.

materials furnished by a Súdrá, shall himself become a Súdrá and the Súdrá shall become a Bráhmiu," means, according to Madhava, that the whole benefit of the act accrues to the Súdrá, whilst the sin fully attaches to the Bráhmin.

15. The right also belongs to women as much as to Súdrás, in virtue of the text: "Women and Súdrás are governed by the same law."

16. Vasishṭha: "Man, produced from virile seed and uterine blood, proceeds from his father and his mother, as an effect from its cause. Therefore his father and mother have power to give, to sell, or to abandon, their son. But let no man give, or accept, an only son: for he is to continue the line of his ancestors. Let not a woman give or accept a son, unless with the assent of her husband."(1) "A person, being about to adopt a son, should take an unremote kinsman, or the near relation of a kinsman, having convened his kindred, and announced his intention to the king, and having offered a burnt offering, with recitation of the prayers denominated 'vyáhṛiti' in the middle of his dwelling. But, if a doubt arise, let him set apart, like a Súdrá, one whose kindred are remote; for it is declared 'Many are saved by one.' When a son has been adopted, if a legitimate son be afterwards born, the given son shares a fourth part."(2)

17. Therefore, if there must be an order from the husband, it is for a married woman only, for apparent reasons; but, for a widow, even without it adoption may be made, with the permission of her father, or, on failure of him, of the relations [Gnāti] under this precept: "Let a female be taken care of by her father while a child, by her husband after marriage, and by her sons, in her old age. If none of these exist, let her other relations [Gnāti] take care of her. A woman is never fit for independence."(3) Thus, a woman's dependence on her husband is declared only in respect of a particular period and time. In case of his being dead, or [unable] from old age, or other cause, or from helplessness, then [she is] indeed under the power of her sons or other relatives.

18. By Kátyáyana also it has been said: "If a woman, without the orders of her father, husband, or son, should perform obsequies, such obsequies bear no fruit."(4) What is here said of the orders of her father, husband, &c., relates only to particular periods of time. *Obsequies* here means, rites performed in view to the other world. The husband's consent, when the husband is alive and the consent is possible, therefore, is what is here meant, not any other kind of consent. Therefore the right of adoption, even without the order of her [late] husband, does belong to a widow.

19. The *unremote kinsman*, means, in each case, the sapiṇḍa nearest [to the adopter]; among whom again, the nearest of all is

(1) Vasishṭha, xv. 1,—6.
(2) *Ibid*, xv. 6—9.
(3) Yajñavalkya, i. 85.
(4) Not found in Cole. Dig.

the brother's son; for "If among several brothers of the whole blood, one of them have a son born, Manu pronounces them all fathers of a male child by means of that son."(1) So says the Mitákshará. And this must be the proper motive of that precept; for it is impossible there can be any other. The *remote kinsman*, means 'one of another caste.' And my father has said that; "A married man, who has even had a son born, may become an adopted son." This also is reasonable, for there is nothing against such a view.

20. As for this text of the Káliká Purána: "O Lord of the earth, a son, having been initiated under the family name of his father, unto the ceremony of tonsure inclusive, cannot become the son of another man [anyatas]. The ceremony of tonsure and of investiture being indeed performed, under his own gotra, sons given, and the rest may be considered as issue: else they are termed slaves. After their fifth year, O king, sons given and the rest are not sons. But, having taken a boy five years old, the adopter should first perform the sacrifice for male issue," it relates to *asagotras* only. *Unto the ceremony of tonsure inclusive*; here the particle, *ang*, is inceptive, used for the sake of entirely including all such cases; for if it be meant as a limit conclusive, it will have the objection of being in opposition to the ceremonies of tonsure and investiture. But much reliance is not to be placed on this last passage, because it is not to be found in two or three copies of the Káliká Purána.

21. The son given is of two sorts; first, simple; second, son of two fathers. The first, is one bestowed without any special compact; the last, is one given under an agreement to this effect, 'he shall belong to us both.' Here the first should perform the funeral ceremony and the other rites for the adopter only, as may thus be demonstrated: In the desire of accomplishing the acceptance of a son, by the term 'son' being in second person, in the phrase, "being about to adopt a son" [para. 16] and the like, detailing the rules for the ceremony, the production of a son is declared. But the adopter cannot possibly make a son in the manner one is naturally born. Therefore, the word 'son,' means something invisible which results in the competency to do all that a son can do. Hence, in the family of the acceptor, the condition may [in this way] be brought about from which result the acts suitable to the different relations of son, father, and the rest. So it is declared by Manu: "A given son must never claim the family and estate of his natural father: the funeral oblation follows the family and estate, but of him who has given away his son, the obsequies fail."(2)

22. *Follows the family and estate*, goes after the family and estate, means, "is generally co-existent with their connection with the family." The *given son*, the simple adopted; since in the case

(1) Manu, ix. 182. (2) Manu, ix. 142.

of a Dvyámushyáyaṇa, the same will be hereafter declared to continue. *The funeral oblation,* according to Medhátithi, Kulluka Bhatta, and others, means the funeral ceremony and other sráddhas. According to other authors again, *the funeral oblation* means sapiṇḍa connection; and *obsequies*, the funeral and other sráddhas. The correct interpretation is this: As by the passage: "He, who has begotten a son, and whose hair is still black, may maintain a sacred fire," his manhood is exemplified, and again, the particular position, by the passage: "He measures out the inner portion, and the outer portion of the altar;" even so, in this place, having merely exemplified the acts connected with the obligation of the funeral oblation for the natural father and the rest, by the terms, 'family,' 'estate,' 'funeral oblation,' and 'obsequies,' the cessation of them is declared.

23. From this also results, the establishment of the cessation of family connection with the father's whole brother, and the rest. Therefore also, even the son begotten by the simple adopted son shall perform [his father's] sapiṇḍíkarana, párvana sráddha, and the rest, in conjunction even with the [original] adopter. Even so, his son also.

24. However, Kátyáyana, opening the discussion of the 'Dvyámushyáyaṇa,': says "Now, when the family connection of sons, either adopted, or purchased, and of the son of an appointed daughter, remains unsettled, through their acceptance by another they become sons of two fathers," and also: "If there be no offspring of these adopters by their own wives, they take the estate, and give the funeral oblations to three ancestors; if there be no offspring, to either the giver or receiver, they should give the oblation to both. Having separately referred to both in one sráddha, they shall call upon both of them, the ancestors both in the natural and adoptive family to three degrees."(1) This text refers to the 'son of two fathers,' because of his premising: '*They become sons of two fathers.*'

25. If either the natural parent, or the adoptive father, have no other male issue, the Dvyámushyáyaṇa, or 'son of two fathers,' shall present the funeral oblation to him, and shall take his estate; but not so if there be [male issue]. If both have legitimate sons, he offers an oblation to neither, but takes a quarter of the share allotted to a legitimate son of his adoptive father; from this text of Vasishtha: 'When a son has been adopted, if a legitimate son be afterwards born, the given son takes a fourth part:"(2) and likewise this of Kátyáyana: "If a legitimate son be born, the rest are pronounced sharers of a *fourth part*, provided they belong to the same caste: but if they be of a different class, they are entitled to food and raiment only."(3) The reading in the

(1) Not found. (2) Vasishṭha, xv. 9.
(3) H. Cole. Dig., 348, ccxviii.

Kalpataru is, 'a third part.' *Those of the same caste,* according to Vijñánesvara refers to the son of the wife, the son adopted, and the rest.

26. But if neither has male issue, then he shall perform a single sráddha to both, in the mode declared above, by the term "in one sráddha, &c." Moreover, in the Hemádri is a text of Kárshnájini: "With as many degrees of forefathers as there may be in both the families, let the adopted sons, &c., perform the sapiṇḍikarana rite, their sons with two, and their grandsons with one. The fourth degree, at pleasure. This [sapiṇḍa relation] extends to three degrees. At the ordinary seasons, there is no distinction of degrees: but on the [anniversary] day of death, having invoked them singly let him perform the sráddha according to the proper rite." This sense is consonant also to the text of Kátyáyana. [para. 24.]

27. This is the meaning: 'The son of two fathers, and the rest, shall perform the sapiṇḍíkarana of those dying in the families of both the natural and adoptive fathers, with the father [of the deceased], and the rest. But the sons of those adopted, and the rest, shall perform their sapiṇḍíkarana with that of both the natural, and adoptive fathers. Their grandsons also shall associate their natural father with their adoptive grandfather, and their natural great-grandfather.' *At the fourth degree,* their great-grandsons. *Pleasure,* desire; that is, they shall invoke the adopter, or not, as they please; but the natural father, they must invoke. *At the ordinary seasons;* that is, at the days of new moon, [amávásyá] and other seasons, the sráddha according to the degrees of forefathers of the natural and adoptive fathers, is to be celebrated. But on the anniversary of death, having invoked the single person alone, let them celebrate the ekoddishta sráddha for him.

28. Some, however, say: 'Since the rite of simple adoption is not [mentioned], he does not exist; and there is no agreement to the effect: 'He belongs to us both,' because no rite for it exists. One taken without this agreement, therefore, is even a son of two fathers. And even by him, either a double sráddha, or a single one, may be celebrated, by invoking both his natural and adoptive fathers, in the amávásyá, &c. But the sapiṇḍíkarana, párvana, and other sráddhas, must be performed for the adopted son, in company with both his natural and adoptive fathers, by his son. Even so, by his son, and the rest.

29. This must be considered. Because, though the phrase 'simple adopted' is certainly nowhere mentioned, still, however, this satisfactorily results, even from the declaration of the entire cessation of the connection with the natural father and the rest, by the above recorded text of Manu [para. 21] which prohibition does not apply in a Dvyámushyáyaṇa adoption. Further, a marriage in the family of the procreator within seven degrees, which is altogether illegal according to the text of Gautama: "With the kinsmen on the side of the father, viz. of the procrea-

tor, beyond the seventh degree; and with those on the mother's side, beyond the fifth, &c.," would be unmeaning in a Dvyámushyáyana adoption, because the sapiṇḍa affinity [to the procreator] still exists therein. Therefore, the term, 'simple adopted,' must necessarily be expressed, to make the same agree with the text, because of the declaration of the prohibition of the sapiṇḍa connection.

30. Moreover, in the Pravarádhyáya [it is said]: "They who become sons of two fathers, whether adopted, purchased, or the rest, cannot take in marriage any one of either gotra, after the example of Saunga and Saishira." In which also, the term *either gotra*, is used of the Dvyámushyáyaṇa. And the prohibition of connection in the natural family [gotra] is declared by the text of Manu, which is the difference [between the two]. By the distinction also, between adopted son, 'simple,' and, 'son of two fathers' [the term, simple] is proper to be included; whence even the propriety of the term 'simple adopted son' is established.

31. Even so Bhaṭṭa Somesvara, satisfactorily reconciles the one doctrine, under the text of Manu [para. 21]: "That there was a cessation of the sapiṇḍa connection between Arjuna [as] the son of Kunti, born after she was given in adoption by [her father] Sura to Kuntibhoja, and Subhadrá, the daughter of Vasudeva, who was the son of Sura," with the opposite opinion, "that Arjuna could not marry the said Subhadrá," as might seem to result from that text of Gautama [para. 29], applying solely to the prohibition of [a wife] "come of the same seed," by adducing the affirmation of the commentaries in favour of the utter exclusion of the family connection [after the adoption.]

32. As for what some authors say: 'That the sapiṇḍa connection of Kunti with the family of Sura, is declared by Somesvara, under the text of Gautama, to continue through seven degrees,' the reason is, that they have not read the book. Therefore, the text of Gautama, after having previously declared the cessation of sapiṇḍa relationship, refers to the prohibition [of marriage] in the family of the natural father, and not as considering the subject of sapiṇḍa relationship. In this way, the correctness of the terms, son 'simple adopted,' and 'son of two fathers,' being established, the possibility of an agreement to the effect: "He shall belong to us both," [para. 21] is likewise established; for the object is manifest, by the accepter knowing him to be 'son of two fathers.' And again, the sapiṇḍa relationship of the simple adopted son, extends, in his adoptive father's family, to seven degrees on the father's side, and to five degrees on the mother's side.

33. As for the text of Vriddha Gautama: "The sons given, purchased, and the rest, who are adopted by those of their own general family, by the observance of form, enter the lineage [gotra of the adopter]. But the relation of sapiṇḍaship is not prescribed," as well as that of Brihat Manu: "Sons given, purchased, and the rest, retain relation of sapiṇḍaship to the natural father, as extend

ing to the fifth and the seventh degrees: like this, their general family, which is also that of their adopter," and moreover that of Nárada: "For the sake of religious merit, [being adopted] like the real son, under the family name of each respectively [tat tat gotrena] sons [who are] reared: for such, merely participation in a share and the oblation of the funeral cake, is declared"(1); they are, all three, not of good authority; at least, if their authority be good, they are to be used only for the sake of determining the want of sapiṇḍa relationship of the Dvyámushyáyaṇa, as far as seven generations, in the family of the adopter; for, in the case of a simple adopted son, his sapiṇḍa relationship, as far as seven generations in the family of the adopter is declared by the aforesaid text of Gautama, [para. 29] and because his sapiṇḍa relationship at the same time, in the family of his natural father, is declared to cease by the text of Manu [para. 21].

34. As for the passage in the Sapiṇḍya Nirnaya ascribed to some authorities: "Yet if [an adopted son's] investiture and other initiatory rites, have been celebrated in the gotra of his natural father, his sapiṇḍa relationship to his natural father's family is retained, both to the father, and to the mother; to the fifth degree [from the mother,] and to the seventh [from the father]: but to three degrees in the family of the adopter, by reason that there is a want of the state of begetting, and of investiture, to the author of the secondary paternal relation, the adopter. However, if the adopted son be initiated in the gotra of the adopter, his [sapiṇḍa relationship] with the adopter and the rest will continue," its foundation is not known.

35. Again, if the paternal relation exists not, by reason of the absence of the acts of begetting, of investiture, and the like, in what manner arises the adopted son's sapiṇḍa relationship to either, even, as far as three degrees or his performance of śráddha and other ceremonies for the adopter and the rest of his family? Neither can it be said, 'the paternal relation and sapiṇḍa relation are necessarily connected,' because by this, on the absence of the first, the want of the sapiṇḍa, relationship would ensue. The result of it is this: Sapiṇḍa relationship even of the adopted son, with the adopter and the rest of his family, has been already pronounced by the text of Gautama and others [para. 29:] "With the kinsmen on the side of the procreator beyond the seventh degree." And this is conclusive.

36. Now this is the rite for gift and acceptance of a son. In this matter, the power of giving in adoption, where there are more sons than one, allows even of any one of them, not being the eldest; and that of acceptance, attaches to one who has not had a son born, or whose sons are dead. The right of married women [to adopt, is good] with the authority of the husband; in default of

(1) Not found in the Institutes of Nárada in the S. B. E. Series. This text is attributed to Devala.

him, with that of their [own] fathers, and the rest. Of Súdrás [adopting], the daughter's son, or the sister's son are to be taken, and no other. By the other superior classes, however, the nearest sapiṇḍa relation; in default of them, the remote kindred, but not one of another caste.

37. Then the giver, on the day fixed for the acceptance, having duly called to mind the proper time, and the other considerations, and having thus vowed: 'I am about to make a gift of my son for the cessation, between myself and rest of my family, and this son, of the several duties arising from the reciprocal connection, at present existing between us, as father and son and the like,' shall perform the Ganesa pujá, svasti váchana, mátreká pujá, vriddhi sráddha, and the other rites.

38. The accepter, too, having fasted on the day preceding that fixed for the acceptance, and on the next day having summoned his kinsmen, and having intimated to the king his taking a son; having called to mind the time, and other considerations, and having thus vowed: 'I am about to take this person as a son, to the cessation of the mutual connection of father, son, or the like, at present subsisting between him, and his procreator and the rest of that family, and for the accession between him and me, and the rest of my family, of the duties mutually arising from the respective connection of father, son, and the like (by this adoption),' and having performed, the Ganesa pujá, svasti váchana, mátreká pujá, vriddhi sráddha, áchárya varana, and the various reverences to be made, having declared his intention and honored the áchárya, with the earrings, a pair of cloths, turban, madhuparka and the rest, let him give a feast to three Brahmins, and to his kindred.

39. And the Achárya, having thus vowed: 'I am about to do my proper duties,' and having performed the marking out of the altar, and the other acts as far as the consecration of the fire, inclusive, shall celebrate the rites enjoined in the words of the Vedas and the rest, as far as the straining of the ghee inclusive.

40. Then let the accepter, having gone near the giver, thus beg, "give me this son"; and the giver, with the recitation of the five prayers [the initial words of the first of which are] *Ye yajnena*, having called to mind the time, and the rest, having repeated his intention as above detailed, shall declare, 'I give you this son, adorned with ornaments, according to my ability.' These five mantras commencing with *Ye yajnena* of which Nabhanedishta, son of Manu is the Rishi and Visvèdèva the deity, and Jagati the metre, are then recited to complete the gift of the son.

41. Then the accepter, having accepted him with the prayer *Devasya tva*, and the others, and having repeated the *Káma stuti* in the form enjoined by his own *sákhá*, having inaudibly repeated the mystical invocation *angad angát*, &c., having, kissed the forehead of the child, let him carry him within his own house, adorned with cloths and so forth, accompanied with rejoicings.

42. Next, the Acharya, having performed the setting down of the ghee and the rest, as far as the portioning of it inclusive, having performed a burnt offering even with the ghee, with the Vyáhriti incantation, both separately and together, having dressed the oblations, let him offer a burnt offering. He then commences the principal burnt offering of dressed oblations, for acceptance of a son, with the words of the Veda. Having commenced with the words, "*Tubhyam agne,*" &c., let him conclude with those commencing "*Pragvadattah.*" Thus ends the rite of adoption.

SECTION VI.

Partition of debts and of concealed effects.

1. This settled, I return [to my subject]. Kátyáyana states a special rule about partition of debts: "The debt of the father, one incurred by a parcener himself on account of the debts of the father, and one specially his own; debts so incurred, must be examined on a partition with the kinsmen."(1) *On account of the debts of the father,* incurred for the sake of discharging the father's debts. *Specially his own,* [contracted by other] than himself, for the maintenance of his family. The same author says: "A debt contracted by a brother, a paternal uncle, or a mother, for the [support of the] family, must be fully discharged by the co-heirs, when partition is made."(2)

2. The same author also says, in case the debt be less than the property: "But having paid the debt [to the creditors], and what was bestowed through affection, let them divide the balance."(3) *Bestowed,* promised. Nárada: "What remains, after discharging the father's donation, and after payment of his debts, may be divided by the brothers, so that their father continue not a debtor."(4) *The father's donation,* what had been promised by the father. The same author says: "What has been given for religious purposes, and through affection, and the debt which has been added by himself, that and the visible estate, let them divide; any other debt is not to be given, out of the paternal estate."(5) The meaning is this: 'What has been given for religious purposes, as well as through affection; that is what has been added by the father himself, that is what has been made by himself; such debts [and the visible estate] they shall divide. Payment [dana] is not [allowable], out of the paternal estate, of debts other than these.'

3. The same author also says, in case of suspicion that effects have been concealed: "A house, arable land, or quadrupeds, dis-

(1) II. Cole. Dig., 480, cccIxxii.
(2) *Ibid,* 480, cccIxxi.
(3) II. Cole. Dig., 479, cccIxix.
(4) Nárada, xiii. 32.
(5) II. Cole. Dig., 481, cccIxxiii.

covered must be divided; if it be justly suspected that effects are concealed, a discovery by ordeal is prescribed by law. Thus Manu declared, that household utensils, beasts of burden, and milch cattle, ornaments, and workmen, must be divided, when discovered: if effects are [suspected to be] hidden, a discovery must be obtained by the Kosha mode of ordeal."(a)(1) *Workmen*: slaves, and the like. Here even, the Kosha ordeal itself has been fixed in such matters, in the chapter on Ordeals, by this very authority: "In sustaining the truth of doubts in partition among heirs, at all times, [and] in settling a multitude of proofs [kriyâ], let them even undergo the Kosha ordeal."(2)

SECTION VII.

On property not liable to division.—(Avibhájyam.)

1. Manu says: "Wealth, however, acquired by learning, belongs exclusively to them who acquired it; so does any thing given by a friend, received [at or] on account of marriage, or presented as a mark of respect to a guest."(3) Vyása: "Wealth gained by science, or earned by valour, or received from affectionate kindred, belongs, at the time of partition, to him [who acquired it], and shall not be claimed by the co-heirs."(4) *Received from affectionate kindred* [Saudáyakam]; this term will be hereafter explained.

2. This [wealth] must be understood to be acquired, without loss to the father's estate. Thus also Yájñavalkya: "Whatever else is acquired by the coparcener himself, without detriment to the father's estate, as a present from a friend, or a gift at nuptials, does not appertain to the co-heirs; nor shall he who recovers hereditary property, which had been taken away, give it up to the parceners: nor what has been gained by learning."(5)

3. But Sankha declares a special rule, relating to the recovery of land, derived from ancestors but long lost: "Land [inherited] in regular succession, but which had been formerly lost, and which a single [heir] shall recover solely by his own labour, the rest may divide, according to their due allotments; having first given him a fourth part."(6) That is, 'having given to the recoverer a *fourth part*, of the recovered property, they shall divide the balance equally, with the recoverer.'

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(1) II. Cole. Dig., 484, cccIxxiv.
(2) *Ibid*, 484, cccIxxiv.
(3) Manu, ix. 206.
(4) II. Cole. Dig., 444 cccxlvi.
(5) Yájñavalkya, ii. 118 and 119.
(6) II. Cole. Dig., 464, cccIix.

(a) This is an ordeal in which the person suspected of misconduct is made to taste of the water in which an idol of some ferocious deity has been washed and is pronounced to be really guilty or otherwise according to the visible effects produced on him by drinking such water.

4. Manu says: "What a brother has acquired by his labour without using the patrimony, he need not give up to the co-heirs; nor what has been gained by learning."(1) Vyása: "What a man gains by his own ability, without relying on the patrimony, he need not give up to the co-heirs, nor what he acquired by learning.(2) *Acquisition by learning* is explained by Kátyáyana: "Wealth gained through science, which was acquired from a stranger, while receiving a foreign maintenance, is termed acquisition through learning."(3)

5. The same author elucidates this term: "What is gained by the solution [of a difficulty], after a prize has been offered, must be considered as acquired through science, and is not included in partition. What has been obtained from a pupil, or by officiating as a priest, or for [answering] a question, or for determining a doubtful point or through display of knowledge, or by [success in] disputation, or for superior [skill in] reading, the sages have declared to be the gains of science, and not subject to distribution. The law is the same in regard also to artizans [silpi], and to increase of price. A prize which has been offered for the display of superior learning, and a gift received from a votary for whom a sacrifice was formerly performed or a present from a pupil formerly instructed, sages have declared to be the acquisition of science: what is otherwise acquired, is the joint property of the co-heirs. Even what is won by surpassing another in learning, after a stake has been deposited, Brihaspati pronounces the acquisition of science, and impartible. What is obtained by wager in learning, what is received from a pupil, or for the performance of a sacrifice, Bhrigu calls *the acquisition of science.*"(4)

6. *Solution*, acording to the Madana Ratna, means, the reading of passages of the Vedas having the order [of construction, krama], and the sentences [jatá], and the like, duly linked together. Some, again, say it is the interpretation, in a public assembly, of concealed meanings required to be made known. The construction is, 'solved after a prize [has been offered].' *Display*, public exhibition. *Superior reading*, pre-eminent reading. *In regard also to artizans*, meaning, that this law, respecting science, is to be applied also among artizans. *Increase of price*; reward for approved work. *Performance of a sacrifice* is merely an example.

7. Here also, in all these cases, indivisibility applies, only when no detriment has been caused to the paternal estate, in acquiring superior knowledge, and wealth; for, in case of detriment [to the estate], the acquisition is divisible. Hence it is that Kátyáyana says: "Yet Brihaspati has ordained, that wealth shall be partible, if it was gained by valour by brothers who were instructed in the family or by their father."

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(1) Manu, ix. 208.
(2) II. Cole. Dig., 451, cccliv.
(3) II. Cole. Dig., 444 cccxlvii.
(4) *Ibid*, 444 cccxlvii.

8. Also in case of loss to the paternal estate even, the acquirer gets a double share, from this text of Vasishtha: "He amongst them, who has made an acquisition, may take a double portion of it."(1)

9. Nárada states a distinction in some cases, in acquisition of wealth through learning: "He who maintains the family of a brother studying science, shall take, even though not learned [asruta], a share of the wealth gained by science."(2) The word *asruta* means unlearned, according to the Madana Ratna. But the proper sense is 'not promised thus: "I will give a share."

10. Gautama declares a distinction also, with regard to wealth acquired without detriment to the father's estate: "His own acquired wealth, a learned man may, if he please, give up to unlearned co-heirs."(3) He who is versed in knowledge, is a *learned man.* The meaning is, that, at his own pleasure, he may give it to his unlearned brothers. Kátyáyana: "No part of the wealth, which is gained by science, need be given, by a learned man to his unlearned co-heirs; but such property must be yielded by him, to those who are equal or superior in learning. A learned man need not give a share of his own acquired wealth without his wish to an unlearned co-heir: provided it were not gained by him, using the paternal estate."(4) According to Madana, this prohibition applies only where there exists other property for those brothers who exist; but on failure of other property, a share of it even must be given to them.

11. Brihaspati declares that to be impartible, which has been given by the father or other persons: "That which may have been given, either by the paternal grandfather, or the father, as well as by the mother, is not to be taken back; any more than that acquired by valour, or the wealth of a wife."(5) Nárada: "Excepting what is gained by valour, the wealth of a wife, and what is acquired by science, which are three sorts of property exempt from partition and any favour conferred by a father."(6) Kátyáyana: "That which is taken under a standard, is declared not to be subject to distribution. And also, what is seized [by a soldier] in war, after routing the forces of the enemy, and after risking his life for his lord, is named *spoil taken under a standard.*"(7) The same author says: "When [a soldier] performs a gallant action, heedless of risk, and favour is shewn to him by his lord, pleased with that action; whatever property is then received by him, shall be considered as *gained by valour.*"

12. Here Vyása states a distinction: "The brothers participate in that wealth, which one of them gains by valour or the like, using any common property, either a vehicle or weapon or

(1) Vasishtha, xvii. 51.
(2) Nárada, xiii. 10.
(3) Gautama, xxviii. 30.
(4) II. Cole. Dig., 449, cccl.
(5) Brihaspati, xxv. 78.
(6) Nárada, xiii. 6.
(7) Quoted as Manu s. II. Cole., Dig., 465, ccclx.

the like; to him, two shares should be given: but the rest should share alike."(1)

13. Vyása defines the gift of affectionate kindred [saudáyakam]:—"That which is received, by a married woman or by a maiden, in the house of her husband or of her father, from her husband or from her parents, is termed *the gift of affectionate kindred.*"(2) Kátyáyana: "What is received with a damsel equal in class, at the time of accepting her [in marriage], let a man consider as wealth received with the maiden; it is deemed pure, and promotes increase [of prosperity]. But let him know that to be received on account of marriage, which is accepted by him with his bride: all such wealth is considered as means of acquiring virtue."(3)

14. What is acquired in "the Ársha rite again which consists in giving his daughter after having received a pair of kine," is denominated, *wealth received with the maiden.* Here even, like wealth acquired by learning, such acquisition also is impartible only if it be acquired without detriment to the father's estate. But, if gained by any other means, except learning or the other specified modes, it is certainly liable to partition. And so Manu:—"And if all of them, being unlearned, acquire property [before partition] by their own labour, there shall be an equal division of that property; for it was not the wealth of their father: this rule is clearly settled."(4) *Labour,* employment in agriculture, &c. *Not of their father,* means, without assistance from the father's wealth.

15. Other things exempt from partition have been enumerated by Manu: "Cloths, vehicles, ornaments, prepared food, water, women, sacrifices and pious acts as well as the common way, are declared not liable to distribution."(5) *Vehicles,* conveyances. The *cloths, conveyances,* and *ornaments,* belong to the possessor, if they are of equal value. If the value of one article be more or less than that of another, then certainly let them be divided.

16. But the cloths, &c., and other things worn by the father, must be given to the person who partakes of food at his obsequies; as directed by Brihaspati: "The cloths and ornaments, the bed, and similar furniture, appertaining to the father, as well as his vehicle and the like, should be given, after perfuming them with fragrant drugs and wreaths of flowers, to the person who partakes of food at the sráddha."(6)

17. If the goats, &c., be unequal in number a special mode of disposal is ordained by Manu: "Let them never divide a single goat or sheep, or a single beast with uncloven hoofs: a single goat or sheep belongs to the first-born."(7)

18. Both the *prepared food* and *water,* are to be enjoyed [by all] according to their needs. *Women,* female slaves. If they be

(1) II. Cole. Dig., 281, cx.
(2) do.
(3) *Ibid,* 463, ccclviii.
(4) Manu, ix. 205.
(5) Manu, ix. 219.
(6) Brihaspati, xxv. 85
(7) Manu, ix. 119.

of an odd number, they are to be caused to work [for all] by turns. But if of an even number, they are to be distributed.

19. However, if they were kept as concubines by the father, they are not to be distributed, even if of an equal number, by reason of this text of Gautama: "No partition is allowed, in the case of women connected with the father or with one of the co-heirs."(1)

20. According to the Kalpataru: 'By the term *sacrifices and pious acts* [Yoga-kshema], councillors, family priests, and the like, are denoted.' But Laugakshi says: "The learned have named a conservatory act, kshema; and a sacrificial one, yoga: both are pronounced indivisible: and so are the bed and the chair." In this place, a conservatory act, means [construction of] tanks, gardens, and the like: *a sacrificial one*, a grand sacrifice, a feast to Brahmins, and the like. The meaning is this: Whatever property is, with consent of all whilst in a state of unity, set apart for this purpose, and kept by one individual, with that very property that act of religion shall be executed by that same individual, and by no other: neither shall all join for the purpose. *The common way*, the way to the house or the like, also land for cattle pasture, and the like.

21. As for this text of Sankha and Likhita: "No division of a dwelling takes place; nor of water-pots, ornaments, and used cloths:"(2) and this of Vyása: "A place of sacrifice, a field, a vehicle, dressed food, water and women, are not divisible among kinsmen, though [transmitted] for a thousand generations,"(3) whereby they declare the impartible nature, both of a *dwelling* and a *field*, they have reference to a place of religious worship and land for cattle pasture, and the like; [or else] to the prohibition of the partition, by the Kshatriyá or other [son of a Brahmin by women of the other classes,] of these two things, obtained [by the Brahmin] by acceptance of donation; because it has been already noticed as forbidden. Or [thirdly], it may refer to a partition of even these two things, when of little price, at a valuation, and not by actual division of them.

22. Brihaspati declares a distinction, in regard to cloths and other matters: "They by whom it is affirmed, that cloths and the like are indivisible, have not considered the matter. The wealth of opulent men, may consist in their cloths and ornaments; property held in common would be unemployed, for it cannot be given to one in exclusion of another; therefore it must be divided by some mode according to reason; else it would be useless. By the sale of cloths, and ornaments; by the recovery of debts in writing; by compensating the dressed food with an equal allotment of undressed grain; an equitable partition is made. Water drawn

(1) Gautama, xxviii. 47. (2) II. Cole. Dig., 468, ccclxii.
(3) II. Cole. Dig., 470, ccclxiv.

from a [single] well or pool, shall be taken by turns: Let a [single] female slave be successively employed by co-heirs in their respective houses, according to their several shares; if numerous, the slaves shall be distributed in equal allotments: such is the law in respect of even male servants. A bridge and field shall be shared [by co-heirs] in due proportion: and the pasture ground for cattle shall be used by the co-heirs in proportion to their allotments."(1) *By the recovery*, meaning by levying it from the debtor.

23. Kátyáyana: "Wealth which has been fixedly assigned for the purpose of religion, and entered in a deed; and likewise water; slaves also, and such fixed property [or a corody, (nibandha)] as has gone in order of descent; cloths that have been worn and ornaments, are not divisible. According to the time they have been enjoyed, even so let them be made use of [in turns] by the brothers."(2) *Wealth*, means such as has been set apart as the share [to be expended for] religion, and so entered in a deed. *Water*, contained in wells or the like. *Fixed property*, a means of livelihood [vritti.] *Do not resemble*, [that is, are] unfit for partition.

24. The division of property, concealed by deceit from the other brothers, is thus explained by Yájñavalkya: "Effects which have been withheld by one co-heir from another, and which are discovered after the partition, let them again divide in equal shares: this is a settled rule."(3) *Effects withheld*, whether by the eldest, younger, or other brothers, among the co-heirs; but says Manu: "An eldest brother, who from avarice shall defraud his younger brothers, shall forfeit the honours of his primogeniture, be deprived of his [additional] share, and be chastised by the king."(4)

25. In this place also, the term *eldest brother*, is used merely to denote the heirs generally, by the argument exemplified in the loaf and staff; and the meaning is: 'If blame attaches even to the eldest, how much more to the younger ones?' Even so Gautama: "Him indeed, who deprives an heir of his right share, he does certainly destroy; or, if he destroy not him, he destroys his son, or else his grandson."(5) Whoever debars, or excludes from participation, an heir or person entitled to a share; he, being thus debarred of his share, destroys that person, who so debars him of his right; or if he do not destroy him, he destroys his son, or his grandson.

26. Nárada: "That wealth, which has been acquired by a man after separation, belongs to himself alone: what has been recovered, after being seized or lost, and the before mentioned property [may be afterwards] [divided]."(6) *Before mentioned*, as [property] concealed by any one, among the co-heirs. *May be*

(1) Brihaspati, xxv. 79—84.
(2) II. Cole. Dig., 471, ccclxv.
(3) Yájñavalkya, ii. 126.
(4) Manu, ix. 213.
(5) Not found in the Institutes of Gautama in the S. B. E. Series.
(6) Not found in the Institutes of Nárada in the S. B. E. Series.

afterwards,—divided is understood [to complete the sense]. Manu: "When any common property whatever, is brought to light after partition has been effected, that is not considered a [fair] partition: it must even be made again."(1)

27. Yájñavalkya states the modes of decision in case of denial of partition made by any one: "When partition is denied, the fact of it may be ascertained by the evidence of kinsmen, relatives, and witnesses; and by written proof, or by house or field separately possessed."(2) From the term, *separately possessed,* we must understand the word *yautaka* (separately held) as an adjective, of 'house' and 'field.' Nárada also says: "If a question arise among co-heirs in regard to the fact of partition, it must be ascertained by the evidence of kinsmen, by the record of the partition, or by separate transaction of affairs."(3)

28. The same author says: "The religious duty of unseparated brothers is single. When partition has indeed been made, religious duties become separate for each of them."(4) Here the term *unseparated,* is intended even to denote the condition, whilst the substantive, *brothers,* is [merely] used illustratively of which the condition is so denoted. By this [reasoning], it results that in every unseparated family, of whomsoever it may consist, father, grandfather, son, son's son, paternal uncle, brother, brother's son, or any other [member], the religious duty is single.

29. Here again, as, in the unity of place, time, agent, and the like, one agent is by reasoning obtained for several causes, as supporting several parts of one act; so even, we may understand from the text, that there may be distinct acts, of agents [otherwise] unseparated. Hence all those religious acts required for performance of sacred, as well as of more common rites, even of unseparated brothers, are separate for each, in manner of the distinctions in the nature of a consecrated and a common fire, and the like, being connected with distinct agents. Even so the sráddha also, of the paternal uncle, brother, son, or others at the Amávásya, and other [seasons], is even separate, by reason of the separation of the manes. But the sráddha, &c., of brothers [dying] without a sacred fire, is to be executed by one agent only, because the manes honored are the same. In case of separation of place, by residence abroad, the sráddhas are even separate. The acts with the fire, requisite for the rites of those who maintain a sacred fire, also, are even separate; but the worship of the household deities, the Vaisvadeva and other rites, are to be done by one agent only. Even so Sákala says: "Residing with one dressing of food, worship of a single household deity, and moreover one single sacrifice at meals to the Visvadevas, or manes, shew unity. In a family of divided brothers these acts are performed in each house separately."

(1) Not found in the Institutes of Manu in the S. B. E. Series.
(2) Yájñavalkya, ii. 149. (3) Nárada, xiii. 36. (4) Nárada, xiii. 37.

30. As for the text of Asvaláyana, as quoted in the Párijáta: "Of those who reside with one dressing of food, even if [previously] separated, the eldest alone need perform those four sacrifices, which follow the Vákyajna; if men of the twice-born classes, unseparated as well as separated, have their meal dressed separate, let them each celebrate these sacrifices separately previous to taking their food, day by day:" it has reference to persons re-united [after separation], because this conclusion is clearly ascertained, from the one phrase, "of separated persons also, residing with one dressing of food," and the other: "of separated, and unseparated coparceners," in the text.

31. Therefore, in case there be a separate dressing of food, among the re-united the great sacrifices [Mahávajna] are separate. The Vákyajna is the Bráhmayajna. The phrase, *those which follow it*, is here the *atadguna* form of a Bahuvrihi compound, [not being a component part of that which it denotes]; or if it were of the other form, [being a component part], the phrase, 'the Vákyajna, and the rest,' would be void of meaning. As there is no reason for omitting the first mentioned, the term *four* would mean Bráhmayajna and the next three. Hence, the Bráhmayajna is to be even separately done. But [after all], these two texts are not respected by venerable authors.

32. And these texts also, recorded in the Dharma Pravritti: "Sons unseparated must celebrate one anniversary sráddha for both parents: if they be in different countries, they may perform it separately with the Darsha [or Amávásya] and monthly sráddhas: If they be abroad in other towns, unseparated brothers are, even at all times, to celebrate the Darsha and monthly sráddha for both parents, each separately: When unseparated, but resident in different towns, each living upon the wealth acquired by himself, those brothers should celebrate the sráddha and Párvana, each separately," with the following one in the Smriti Samuchchaya: "The Vaisvadeva sacrifice, and the anniversary sráddha, as well as the Mahálaya [or Pitrupaksha] rite, are, in case the family be spread abroad, to be celebrated separately, and the Darsha sráddha in like manner:" are, by a certain author, said to have reference to the re-united, residing in different countries. The correct opinion, however, is, that these are all unauthentic.

33. Or else, if there be unity of place, time, agent and the rest, the instrumentality of one only is found by reasoning. But where the agents are different, the same results by the text itself. As in a difference of place, there is a want of concurrence both of the text and reasoning too; the sráddha, &c., should be separately performed. These texts are founded on mere reasoning. This is the point briefly.

34. Nárada declares other signs also, of partition: "Separated, but not unseparated, brothers, may reciprocally bear testimony, become sureties, bestow gifts, and accept presents. Gift and

acceptance; cattle, grain, houses, land, and attendants, must be considered as distinct among separated brothers, as also the rules of gift, income, and expenditure. Those by whom such matters are publicly transacted with their co-heirs, may be known to be separate, even without written evidence."(1) Gift and acceptance have reference to borrowing transactions. These very terms, 'gift and acceptance,' are repeated in the second text for the sake of clearness. Acceptance of cattle and the rest among separated persons, accomplished by each part, is even the means of generating [sole] ownership; but among unseparated brothers, acceptance by one alone is the origin of the [joint] ownership of the others also. *The rules of gift*, written deeds, and the like. *Income*, entry [or accumulation] of principal and interest, or the like. Brihaspati: "They who have their income, expenditure, and wealth distinct, and have mutual transactions of money-lending and traffic, are undoubtedly separate."(2) 'Vanikpatham' means 'trade.' Yájñavalkya: "It is declared, that brothers, husband and wife, and father and son, cannot become sureties for each other before partition; nor reciprocally lend, nor give evidence for each other."(3)

35. In default of all these signs of partition, proof by ordeal [must be resorted to], since the very same author has declared: "In the absence of all these, a divine test is prescribed."(4) As for the text of Vriddha Yájñavalkya: "In the case of doubts upon the subject of partition, the division must be proved by the kinsmen, witnesses, and written deeds: proof by ordeal is not to be resorted to:"(5) it applies when there are other signs.

36. In case also of total failure in ascertaining whether they were separated or united, a fresh partition is enjoined by Manu: "When there is a doubt of partition among the co-heirs, a partition must be again made, even though they have taken separate places of abode."(6) Nárada states the duties of separated co-heirs: "When there are many persons, sprung from one man, who have their [religious] duties [dharmá] and transactions [kriyá] apart, and are separate in the implements of work [karma gunáh], if they do not transact affairs together should they give or sell their own shares, they do all that as they please: for they are masters of their own wealth."(7) *Duties:* ceremonials, that is, the five great sacrifices, [para. 31,] and the like. *Transactions*, commerce, and the like worldly acts. *The implements of work*, household necessaries, and the like, as the means of performing the acts [of the householder]. By the separate existence of these, a partition is manifested. The sense is, that they, so separated, may [each], even without the consent of the others, make the gift, sale, or other alienation of their respective shares.

(1) Nárada, xiii. 39, 38, 40.
(2) Brihaspati, xxv. 92.
(3) Yájñavalkya, ii. 52.
(4) Not found.
(5) Yájñavalkya, ii. 149.
(6) Not found in the Institutes of Manu in the S. B. E. Series
(7) Nárada, xiii. 42-43.

37. As for the text of Brihaspati: "Separated heirs, as those who are unseparated, are equal in respect of immoveables; for one has not power over the whole, to give, mortgage, or sell it:"(1) according to Madana, it is for putting a stop to the right among co-heirs, even separated as to their shares of [moveable] effects, [though unseparated in other respects], to dispose, by gift or other mode, without [general] consent, of grain, or the like, the produce of undivided fields, or other [fixed property]. According to Vijñánesvara and others, it is for the sake of obviating any future doubt, whether they be separated or united; for, by the consent of those unseparated, the facility of the transaction is ensured.

38. The same author, with reference to one separated by his own wish, and afterwards disputing, says:—"If he subsequently dispute a distribution which was made with his own consent, he shall be compelled by the king to abide by his share, or be amerced if he persist in contention."(2) *Contention*, pertinacious pursuit.

SECTION VIII.

On obstructed heritage, or succession.—(Sapratibandha Dáya.)

1. Now of the order of succession to obstructed heritage. Yájñavalkya thus relates the order of succession to the wealth of one [dying] separated, and not re-united: "The wife and the daughters also: both parents; brothers likewise, and their sons; gentiles, cognates, a pupil, and a fellow-student: on failure of the first among these, the next in order is indeed heir to the estate of one, who departed for heaven leaving no male issue. This rule extends to all [persons and] classes."(3)

2. The wife, if faithful to her husband, takes his wealth; not if she be unfaithful; for it is declared by Kátyáyana: "Let the widow succeed to her husband's wealth, provided she be chaste."(4) So Hárita says: "If a woman becoming a widow in her youth, be headstrong [suspected of incontinence], a maintenance must in that case be given to her, for the support of life."(5) Prajápati: "Dying before her husband, a virtuous wife partakes of his consecrated fire; or if her husband die [before her, she shares] his wealth; this is a primeval law." *Consecrated fire*, all the [three sacred] fires. The same author says; "Having taken his moveable and immoveable property, the base and the precious metals, the liquids, and the clothes; let her duly offer his monthly, half-yearly sráddhas; with presents offered to his manes, and by pious

(1) Brihaspati, xxv. 93.
(2) *Ibid*, 94-95.
(3) Yájñavalkya, ii. 135 and 136.
(4) Not found in Cole. Dig.
(5) II. Cole. Dig., 536, ccccix.

liberality, let her honour the paternal uncle of her husband, his spiritual parents, and daughter's sons, the children of his sisters, his maternal uncles, and also aged and unprotected persons, guests, and females [of the family]." *Base metals*, namely, tin, lead, and the like.

3. As for this text of Brihaspati: "Whatever property a man possesses of every kind, after division, whether mortgaged or not, the wife shall enjoy after the death of her husband, with the exception of immoveable property. Even if virtuous and if partition have been made, a woman is not fit to enjoy immoveable property":(1) it, according to the Smriti Chandriká, refers to a wife who has not [even] a daughter; for a woman having a daughter obtains the immoveable property also. Mádhava, again, considers it to relate to the prohibition of sale, or other transfer, of immoveable property, by a widow, without concurrence of the heirs.

4. As for this text of Kátyáyana: "After the death of the husband, the widow, preserving [the honour of] the family, shall enjoy the share of her husband, so long as she lives: but she has not property [therein, to the extent of] gift, mortgage, or sale";(2) it is a prohibition of gift of money, or the like, to the Vandí, Chárana, and the like. But gift for religious or spiritual objects and mortgage of the like, suitable to those objects, may even be made since fixed and moveable property are both noticed, in the above quoted text: "Having taken," &c. [para. 2nd] and from this of Kátyáyana himself: "A widow, actively engaged in meritorious observances and fasts, constant in the duties of her widowhood, intent upon restraining [her passions], and making holy gifts, even if wanting a son, shall reach the heavenly abodes."(3)

5. Moreover, the text of the same author: "Heirless property goes to the king, deducting, however, a subsistence for the females, as well as the funeral charges: but the wealth belonging to a learned Bráhmin [srotriya] let him bestow on learned Bráhmins":(4) and further that of Nárada: "Except the wealth of a Bráhmana [property goes to the king on failure of heirs]. A king, who is attentive to the obligations of duty, should give something as maintenance to the women of such persons. The law of inheritance is thus declared:"(5) have both reference to concubines, because the term, 'lawful wife' [patní], is not mentioned.

6. But as for this of Nárada: "Among brothers, if any one die without issue, or enter a religious order, let the rest of the brothers divide his wealth, except the wife's separate property. Let them allow a maintenance to his women for life, provided these perserve unsullied the bed of their lord. But if they behave other-

(1) Brihaspati, xxv. 53-54.
(2) Not found.
(3) Do.
(4) Nárada, xiii. 52.
(5) *Ibid*, xiii. 25 and 26.

wise, the brothers may resume that allowance,"(1) it relates to the women of one dying unseparated, [or] re-united, because the reading [of the text] occurs in that context according to Madana.

7. Kátyáyana: "But if her husband have departed for heaven, the wife obtains food and raiment: or if unseparated, she will receive a share of the wealth, so long as she lives." The term *unseparated* is illustrative also of a re-united family. The word 'but [too]' has here the sense of 'or.' From this results a double object of the text, according to Madana: the last [hemistich] referring to a wife lawfully married; the first, to a concubine. The foundation of this exposition is open to question. But the same author clearly explains the real meaning: "She who is intent upon her service to her venerable Guru, is fit to enjoy the share assigned: should she not perform her proper duty, he shall order her [only] clothes [already] worn, and a morsel of food." *Her Guru*, her father-in-law, and other [venerable relatives]. At his pleasure, she may receive a share: otherwise, merely food and raiment. This is the meaning.

8. The same author says: "But a wife, who does malicious acts injurious to her husband, who has no sense of shame, who destroys his effects, or who takes delight in being faithless to his bed, is held unworthy of separate property [*stridhana*]."(1) As for this text: "Let them follow this very same rule also, with females degraded [by crime]: but clothes and grain are to be given to her, and let her be caused to reside within the house," it has reference to a husband [living], says a certain modern compiler. *This very rule* that is, regarding the divorce of a degraded [wife].

9. A mere maintenance is ordained for a woman suspected of incontinence, from this text of Hárita: "If a woman, becoming a widow in her youth, be headstrong [suspected of incontinence], a maintenance must in that case be given to her for the support of life."(2) *Headstrong*, according to the Mitákshará, means 'suspected of incontinence.' This establishes our argument that a lawfully married wife, restrained [in her conduct], takes the wealth. But if there be more than one, they will divide in, and take shares.

10. In default of the wife, the daughter succeeds. Even as Manu says: "The son of a man is even as himself, and the daughter is equal to the son: how then can any other inherit his property but a daughter, who is as it were himself."(3) If there be more daughters than one, they are to divide [the estate], and take [each a share.]

11. In case also, some of them are married, and some unmarried, the unmarried ones alone [succeed], by reason of this text of Kátyáyana: "Let the widow succeed to her husband's

(1) II. Cole. Dig., 602, ccccIxxxiv. (2) II. Cole. Dig., 536, ccccix.
(3) Manu, ix. 130.

estate, provided she be chaste; and in default of her, the daughter inherits, if unmarried."(1)

12. Among the married ones, when some are possessed of [other] wealth and others are destitute of any, these [last] even will obtain [the estate], from this text of Gautama: "A woman's property goes to her daughters, unmarried, or unprovided for."(2) *Unprovided*, destitute of wealth. Those acquainted with traditional law, hold, that the word, '*woman's*' [wife's] includes the father's also.

13. In default of daughters, the daughter's son [succeeds], by the text of Vishṇu: "If a man leave neither son, nor son's son, the daughter's son shall take his wealth. For in regard to the obsequies of ancestors, daughter's sons are considered as son's sons."(3)

14. In default of the daughter's son, comes the father; in default of him, the mother; even as Kátyáyana says: "The widow, being a woman of good family, or the daughters, or on failure of them, the father, or the mother, or the brother, or his sons, are pronounced to be the heirs of one who leaves no male issue:"(4) and likewise Vishṇu: "The wealth of him who leaves no male issue, goes to his wife; on failure of her, it devolves on daughters; in default of daughters, it devolves on the daughter's sons; if there be none, it belongs to the father; if he be dead, it appertains to the mother; on failure of her, it goes to the brothers; after them it descends to the brothers' sons; if none exist, it goes to men of the same family [sakulyá]."(5)

15. As for the opinion of Vijñánesvara that in the complex term *parents*, the omission of one term and retention of the other [ekasesha] constitutes an exception to the regular compound [dvandva], and although the order [of construction] be not certainly defined, yet the meaning [in favour of the mother's priority] may be understood, because the word 'mother' stands first in the analytical form of the compound; also, from the consecutive order of the particular compound ['mother and father'] being the rule, of which the omission of one term and retention of the other ['parents'] is the exception, and since the father is a common parent to many sons, whilst the mother is not so; therefore, of the two, the mother, in the first instance, takes the estate, and on failure of her, the father; it must be set aside, as contrary to those texts: for the word 'mother' being placed first, in the analytical form of the compound, is an exception to the general rule, in regard to the option allowed for the omission of one term and retention of the other, and further, there is no authority for fixing the proper order of succession with reference to the question whether the parent is common to other children or not.

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(1) Not found.
(2) Gautama, xxviii. 24.
(3) Vishnu, xvii. 47.
(4) Not found.
(5) Vishnu, xvii. 4—11.

16. In default of the mother, the uterine brother; in default of him, his son. As for the declaration of Vijñánesvara and others, 'that in default of the uterine brother, those by different mothers succeed and on failure of them, the sons of the uterine brother,' it is wrong: since the term 'brother' has the force of 'whole brother,' and a secondary meaning is implied by the term, 'brother by another mother;' and hence an exposition in favor of both, is contrary [to reason]. Some, however, thus comment upon the use of the term 'brothers'; that since: "Brothers and sisters, with sons and daughters," is one of the maxims [of Pánini], and the term 'brothers and sisters,' coalesces into [the complex term] 'brothers,' by the omission of one term and retention of the other, in a compound of two species: therefore, in default of brothers, the sister [succeeds]". But it is not so, because there is no warrant for holding the word to be an ekasesha compound of dissimilar words.

17. The sons of a brother also, if themselves fatherless at the time of the paternal uncle's death, provided they are capable of understanding [the use of] property, will divide the father's share with their father's other brothers, on the analogy of the rule in: "Among grandsons by different fathers, the allotment of shares is according to the fathers."(1)

18. In default of brother's sons, succeed the gentile relations [gotraja] within the seventh degree, being connected by funeral oblations [sapiṇḍa]. The first among these is the paternal grandmother, from this text of Manu: "The mother also being dead, the father's mother shall take the heritage, [on failure of brothers and nephews]."(2) Even though she is [here] mentioned immediately next to the mother, still she is to be entered at the end, after the brother's sons, after the manner of the entry of [the śráddha for] uninvited persons at the end, as she cannot be placed in the middle of the compact series of heirs ending with brother's son [para. 1.].

19. In default of her, comes the sister; under this text of Manu: "To the nearest sapiṇḍa, [male or female], after him in the third degree, the inheritance next belongs:"(3) and this of Brihaspati: "Where many claim the inheritance of a childless man, whether they be paternal or maternal relations [sakulyá], or more distant kinsmen [bándhavá], he who is the nearest of them shall take the estate."(4) And [the next rank is] hers, both from her being begotten under the brother's family name, and there being no further reservation with respect to the gentile relationship [gotrajatva]: it does not particularly specify the same gentile kindred. Neither is sagotra relationship mentioned in the text as the ground of taking the wealth.

20. On failure of her, the paternal grandfather, and half-brother are both entitled to share and take it, their propinquity

(1) Yájñavalkya, ii. 120.
(2) Manu, ix. 217.
(3) Manu, ix. 187.
(4) Brihaspati, xxv. 62.

being equal, since the [deceased person's] own father was begotten by the former of those two, and was himself the begetter, of the latter as well as of the deceased. The propinquity being similar, and there being a want of any other notice, however slight, beyond the order of the text, or the like, therefore, in other cases also, we must act even thus. For this reason, in default of these two, the paternal great-grandfather, the father's brother, and the son of the half-brother, shall take and share it.

21. All the sapiṇḍás and the samánodakas follow, in the order of propinquity, as enumerated by Manu: "Now the relation of the sapiṇḍás ceases with the seventh person, and that of samánodakas, or those connected by an equal oblation of water, ends only when their births and family names are no longer known."(1) *The seventh*, as counted from the deceased.

22. If no distant kinsmen [sodaka] exist, then come the cognate kindred [bandhu], who are thus specified in another Smriti: "The sons of his own father's sister, and the sons of his own maternal uncles, must be considered as *his own* cognate kindred."(2) "The sons of his father's paternal aunt, the sons of his father's maternal aunt, and the sons of his father's maternal uncle, must be deemed his *father's* cognate kindred." "The sons of his mother's paternal aunt, the sons of his mother's maternal aunt, and the sons of his mother's maternal uncles, must be reckoned *his mother's* cognate kindred."(3) Here also, the order [of succession] follows the order of the text.

23. If, on the other hand, [it be said]: "As the right of the wife and all the others to the wealth is derived from the deceased himself alone, even so that of the cognate kindred is derived in like manner from him: What title then can the cognates of the father or of the mother [of the deceased] have to the wealth? The term 'sons of the sister of the father's father,' and the like, is only for the sake of shewing who are called matru-bandhus, &c., and not for shewing the connection with the wealth." [I answer]: Even without that text, if, after the example of 'the father's maternal uncle, his paternal uncle,' and the rest, in like manner also, the continuous application of that term [cognate] among the father's and the mother's cognates be held to exist, by conjunction [of kin through some intermediate person], the text merely as showing the devolution of the terms would be superfluous. Hence, the text has a meaning only by the acceptation of paternal and maternal cognates, in considering that subject in the rules of succession to property. The conclusion is, that the very same applies, by the declaration of the cognate affinity, to the rules for impurity and other [mutual obligations].

(1) Manu, v. 60.
(2) II. Cole. Dig., 570, ccccxli.
(3) Quoted as Baudháyana's in some books but not found in his Institutes in the S. B. E. Series.

24. In default of cognate kindred, the preceptor; on failure of him, the pupil; by this text of Ápastamba: "If there be no male issue, the nearest kinsman inherits: or, in default of kindred, the preceptor; or, failing him, the disciple."(1)

25. In default of the pupil, the fellow-student is the successor; in default of him, a srotriya; from the text of Gautama: "Venerable priests [srotriya] should share the wealth of a Bráhmin who leaves no issue."(2)

26. In default of such a one, any other Bráhmin, by reason of this text of Kátyáyana: "But in default of all those, the lawful heirs are such Bráhmins, as have read the three Vedas, as are pure [in body and mind], and as have subdued their passions. Thus virtue is not lost."(3) And Nárada says the same: "In every case, the king may take the wealth of a subject dying without an heir, except the estate of a Bráhmin: for the property of a Bráhmin dying without an heir, must be given to srotriyas."(4)

27. Brihaspati: "If Kshatriyás, Vaisyás, or Súdrás, die childless, leaving neither wife nor brother, let the king take the property; for he is indeed lord of all."(5)

28. Yájñavalkya states a distinction with regard to the estates of ascetics and the like: "The heirs of a hermit, of an ascetic and of a student [Bráhmachári] are, in their order, the preceptor, the virtuous pupil and the spiritual brother and associate in holiness."(6) *The student*, a perpetual one; for the father and the rest even are [the natural heirs] of a temporary student. *The spiritual brother*, one who has agreed to bear the appellation of 'brother.' *An associate in holiness*, one appertaining to the same hermitage. 'Being a spiritual companion, and belonging to the same hermitage' is a compound of nouns designating the same person, [Karmadháraya samása]. According to Vijñánesvara, [the succession] of preceptors and the rest, is in the inverse order. But Madana prefers the direct order, from this text of Vishnu: "The spiritual preceptor shall take the property of a deceased hermit."(7)

29. The funeral rites of the deceased, as far as the tenth day's rites inclusive, must be performed by that person [among the heirs] who takes the estate, whoever it may be, even as far as the king himself. Even thus Vishnu says: "He who is heir to the estate, is the giver of the funeral oblations."(8) This same matter has been fully explained by me in the Sráddha Mayúkha, in determining the order of those bound to perform them.

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(1) Apastamba, ii, 6,14, 2 and 3.
(2) Gautama, xxviii. 41.
(3) Word for word from Manu, ix. 188.
(4) Not found in Nárada's Institutes in the S. B. E. Series.
(5) Brihaspati, xxv. 67.
(6) Yájñavalkya, ii. 137.
(7) Vishnu, xvii. 15.
(8) *Ibid*, xv. 40.

SECTION IX.

On re-union after partition.—(Samsrishta.)

1.—Now we proceed to expound the doctrine of re-united coparceners. On this subject, Brihaspati defines re-union thus: "He who, being once separated, dwells again through affection with his father, brother, or paternal uncle, is termed re-united."(1) This re-union, according to the Mitákshará and others, can only take place with a father, brother, or paternal uncle, not with others, because no others are mentioned in the text. But the proper sense is, that this [re-union] arises even from the joint location of the makers of the [first] partition. For the words 'father, and the rest,' are merely in the same way as in a part to denote the whole of the persons who make the partition, in the same way as in: "He measures the altar half within, and half without"; otherwise, there would be a division of the text itself. Hence, re-union may take place with a wife, a paternal grandfather, a brother's grandson, a paternal uncle's son, and the rest also. "He who, being once separated [from the co-heirs] dwells again [in common, is termed] reunited:" from joint location the sense of separated brothers, sons, and the like, does not result. [When two settle thus]: 'The present, or future wealth of us two, is common property, until we make a partition a second time,' when there exists such a sign, either by an understanding or expressed wish, it is a union.

2. In this place, Manu states a distinction: "If brothers, once divided and living again together as parceners, make a second partition, the shares must in that case be equal: there is not in this instance any right of primogeniture [jyeshtyam]."(2) Here, some say: 'that, the unequal distribution being negatived by the phrase, 'the shares must in that case be equal,' the prohibition of the 'eldest son's right' is repeated for the sake of making it clearly understood that although there is to be no inequality in making up the share of the eldest, yet in the distribution the shares may be even unequal, when made up of greater and lesser shares at the time of re-uniting the property.

3. But since the term, 'eldest son's right' [jyeshtyam] and the like, is merely a declaration of the general meaning, therefore, if [the contributions to] the wealth were greater and less, still the share of each must be equal. And the same is the popular practice. Hence, as the foundation of the practice is derived from this text, any supposition of a declaration contrary thereto, is at variance with reason; for another author has said: "The body of the law, like grammar, for the most part, is based on usage."

(1) Brihaspati, xxv. 72. (2) Manu, ix. 210.

4. Brihaspati: "If any one of the re-united brothers acquire wealth by science, valour, or the like [with the use of the joint stock], two shares of it must be given to him and the rest shall have each a share."(1) According to Madana, the meaning of the text is, that a double share being established for the acquirer, by the phrase, 'to the acquirer, two shares,' then in a partition among [unseparated] brothers not re-united, he gets two shares, only in what he has acquired without detriment to the father's wealth; but in a [fresh] partition among re-united brothers, he gets two shares of what was acquired by him, even if at the detriment of the re-united property.

5. Yájñavalkya enumerates the order of those entitled to succeed to the wealth of one re-united: "As of a re-united [co-heir], the re-united [co-heir], so, of the uterine brother, the uterine brother,"(2) which is an exception to the regular succession denoted by "The wife, the daughters," and the rest. Hence, this meaning results, that it is the re-united parcenership, and the rest, which causes a preponderance of the right of inheriting the property of a re-united parcener.

6. As for the doctrine of Vijñánesvara, Madana, and others, *i.e.*, 'That this also refers to one devoid of son, grandson, or great-grandson,' both from the maxim 'that the subject forming an exception be of a nature similar to that [of the rule] which is rejected,' and from the necessity of connection between the terms of the former text: "Of one who departed for heaven leaving no male issue," and the present one: therefore, even though there exist a wife, or other un-reunited near heir, of such a one dying after re-union, still, the others alone who had re-united with him, will take his estate,' it is open to question. There is no necessity for borrowing a portion of that text, as this text can well be understood without that. Nor need the similarity of the subject of a rule and an exception be thorough-going. The similarity may be partial as in respect of sapiṇḍaship. But it may be argued that the term "of the deceased" must necessarily be borrowed. Yet it cannot be so, for that very term is found in the text of Manu, to be presently adduced [para. 13]: "be deprived of his allotment at the distribution, or should any one of them die." But if connection [of the terms] be allowed, in the case of sons, some re-united with the father, and some not re-united, or of grandsons so situated with sons, they would share equally, which is a contradiction: and in the case of one having male issue, this text does not apply.

7. And here again, [such connection] is at variance with that practice, which is an indication of the authority of the law, [para. 3]. But [should it be said], 'though the text be inapplicable, in the case of one having male issue, in default of such connection; yet if there be an assemblage of sons not re-united, with brothers re-united, or the like, then the brothers and others [re-united]

(1) Brihaspati, xxv. 77. (2) Yájñavalkya, ii. 138

would obtain the wealth, not the sons or others [not re-united],' it is not so; because in the last hemistich of the [above] text, it will be shewn to be unworthy of respect.

8. The sense of the first quarter [of the whole text] : "Of a re-united [co-heir], the re-united [co-heir]," has an exception in the second quarter], of the "uterine brother," with which the other is connected. The meaning, therefore, is that in a case embracing both whole and half-brothers, all re-united together, only the re-united whole brother will take the wealth of the re-united brother deceased. The last hemistich is as follows: "Shall give up the share, to [a son at any time] born; or shall retain it, if he died [without issue] :" and the sense of it is this : 'If the pregnancy of the wife of a deceased re-united co-heir, be unascertained at the time of dividing the [re-united] property, and a son be afterwards born, the paternal uncle or other re-united [parcener] shall give the share to that son; but, on failure of him, he [the uncle, &c.] himself shall take it.'

9. Here, the filial relation alone affords the right of taking the father's share; not the fact of production posterior to the partition, since this cannot cause such a result, besides it creates prolixity and would have the absurdity of denying the right to a share, in the case of a son produced in another part of the country previous to partition, but unknown [at the time]. Therefore, to the son previously born even, though not re-united, the uncle, or other [parcener] though re-united, shall give his share.

10. The same author propounds the right of an uterine brother not re-united and a half-brother re-united in taking shares of the wealth: "One of a different womb, being again associated, may take the succession; not one of a different womb if not re-united: but [a whole brother, if] re-united, obtains the property; and not [exclusively] the son of a different mother."(1) Here, from the terms, *one of a different womb; son of a different mother*, the half-brother alone is not intended, but the paternal uncle, and others likewise, because there is nothing to distinguish such association: for, if otherwise, we should have the absurdity of rendering senseless the union with uncles, and the rest, already established [by the text at para. 1.] And there is a want of any other acts suitable to a state of re-union.

11. *If not re-united;* this term applies to those both preceding and following it as a lamp upon a threshold.(a) So, the word *re-united*, by varying the application of it, is to be understood of the whole brother, as entitled by union, both of the wealth and also of the womb. The word *if*, occurring in the former phrase, is to be understood immediately after this, as well as at the end of the text. The word 'exclusively' [even, *eva*] should be supplied.

(1) Yájñavalkya, ii. 139.

(a) *As a lamp on the threshold*: This expression as well as the expressions 'like the crow's eye' and 'like the middle stone of a jewel' are often used by Hindu writers in the sense "In both directions."

12. The following are the meanings of the terms of this text: 'One of a different womb,' that is, one of a separate womb; the wife, the father, the father's father, the half-brother, the paternal uncle, and others, if they be re-united, may take the wealth. If not re-united, those of a different womb do not [succeed]. Hence, by the method of agreement and difference, the re-union of one of a different womb, is declared as the reason for his taking the wealth. A whole brother, termed 're-united,' [by union of the womb], even if not re-united [by union of the wealth], will take the property. By this reasoning, even the community of womb alone is declared a sufficient reason. So, one re-united, as possessing union of wealth; but if only born of a different mother, he will not take anything whatever.

13. From the above, this results, that, the one from his re-union, the other from his community of womb, both jointly share and take it [between them]. Manu specially determines this very principle, in the right of succession among re-united persons: "Should the eldest, or youngest, of several brothers, be deprived of his allotment at the distribution, or should any one of them die, his share shall not be lost: but the uterine brothers and sisters, and such as were re-united after a separation, shall assemble together and divide his share equally."(1) *Be deprived of* by entering another order, by degradation from sin, or the like. *Uterine*, must be joined with brothers, in construction. *And such as were re-united*, that is, the wife, the father, the paternal grandfather, the half-brother, the paternal uncle, and the rest, [para. 1].

14. On this point, Prajápati states a distinction: "Whatever concealed wealth is brought to light becomes the property of the re-united parceners: but lands and houses, those not re-united shall entirely take, according to their shares." *Concealed wealth*, what is capable of being hidden, by depositing in the ground, or otherwise, as gold, silver, or the like. Such, those *re-united*, that is, of a different womb, shall take: but landed property, the uterine brother [takes]. Kine, horses, and other [animals], the uterine brother and he of a different womb [shall share]. According to Madana, he of a different womb alone, if re-united, will take the houses, horses, and the like; but it is not so noted in the text.

15. According to the Smriti Chandriká: 'But if there exist only one species of property, out of the above sources, as concealed wealth, land, kine, and the rest, the uterine brother alone, even not re-united, takes it.' The proof of this must be considered. Among uterine brothers, if some of them are re-united, but other brothers not, nevertheless, those re-united alone will take the wealth, because community of womb, and re-union, exist as a double cause [of succession]. Even so Gautama: "When a re-united [parcener] dies, his re-united co-heir shares his estate,"(2) and

(1) Manu, ix. 211, 212.

(2) Gautama, xxviii. 28.

Brihaspati: "Two brothers, who become re-united through affection, [after being separated] share mutually."(1)

16. Here, this is the ultimate drift: 'A son, whether re-united with his father, or not re-united, shall obtain the entire paternal share, since the power of intercepting the right to take a share, lies in the filial relation. Among [several] sons also, when one is re-united, and the other is not, the re-united one alone [succeeds], by the text [para. 5th]: "Of a re-united [co-heir,] the re-united [co-heir]."

17. In a case of re-union, between a father, a son and any other not being his son, the son alone [succeeds], because the same has already been declared [para. 8th], by the terms: "shall either give up, or shall retain,"&c.

18. In a coparcenary father, brothers, paternal uncles, and others, not being sons, re-united, the parents alone [take it]. Of them again, the mother is first, and then the father, according to Madana.

19. But [after them] the brother, paternal uncle and the rest, shall even take and share it [equally]: for among them all, the state of union exists, as the cause whence their right of taking [shares] is derived.

20. So likewise, in an assemblage of un-reunited brothers, re-united paternal uncles, half-brothers and others, they even share it [in common], by reason of the two phrases [the one, para. 10]: "If not re-united; but [a whole brother, if] re-united, obtains the property: and not [exclusively], the son of a different mother:" (the other, para. 5): "As of a re-united [co-heir] the re-united [co-heir], so of the uterine brother, the uterine brother."

21. In case of the re-union of the wife alone, she alone takes it, from the same text; "of a re-united [co-heir]."

22. In an assemblage of the other persons, re-united together with her also re-united, they alone [succeed]; she does not. Moreover, in commencing the topic of re-union, both Sankha and Nárada have declared: "Among brothers, if any one die without issue, or enter a religious order, let the rest of the brothers divide his wealth, except the wife's separate property. Let them allow a maintenance to his women for life, provided these preserve unsullied the bed of their lord: but, if they behave otherwise, the brothers may cut off that allowance." "The maintenance of the daughter of such an one, is enjoined, to be made out of her father's share: if still unmarried, she will take a share [for the purpose]; if [he died] after that, her husband shall support her."(2)

23. And here, as in the passage "he who offers the rice for the sacrifice should, if the moon rise before its completion, divide the rice into three parts" the sacrificial substance and the rising of the moon being mentioned, the use of the word sacrificial substance

(1) Brihaspati, xxv. 76.

(2) Nárada, xiii. 25 and 26.

is enough for the determination in the sacrifice; even so, the term, *among brothers*, is not [necessarily] required, since from the very commencement, there is a certainty of the agency of re-united persons, in the shares, or like [succession], by death, or entry into a religious order.

24. As for what Sankha, in proceeding to expound re-union, says: "Of those also, departed for heaven without male issue, the property goes to the brothers: In default of them, both parents will take it, or the eldest wife,"(1) it, according to Madana, is intended to fix the order of the un-reunited brothers, and the others, upon the death of his paternal uncle, brother's son, or half-brother, with whom he had previously made a re-union. And, according to the same authority, in this case also, first is the mother, and next the father [para. 18]. *The eldest* that is, she who [best] preserves her duty.

25. In default of a wife, the sister; according as Brihaspati says: "His *sister* also is entitled to take a share of it. This law concerns one who leaves no issue, nor wife nor parent."(2) Some read, his *daughter*. In default [therefore] both of daughter and sister, the nearest sapiṇḍa succeeds.

SECTION X.

Of a woman's peculiar property.—(Stridhana.)

1. Manu: "What was given before the nuptial fire [*Adhyagni*], what was presented in the bridal procession [*Adhyáváhanika*] what was given in token of love [*Prítidatta*] and what was received by her from her brother, her mother, or her father, are denominated the six-fold property of a woman."(3)

2. *Six-fold*, is here used in order to prevent [its reduction to] a smaller number, a [position] which is borne out by the word *other* in the following text of Yájñavalkya: "What was given to a woman by the father, the mother, the husband or a brother; or received by her at the nuptial fire [*Adhyagni*], or presented on her supersession [*adhivedanika*], as also any other [separate acquisition], is denominated a woman's property."(4) Vishṇu likewise specifies more [than those six]: "What has been given to a woman by her father, her mother, her son, or her brother; what has been received by her before the nuptial fire, [*Adhyagnyupagata*], what has been presented to her on her husband's espousal of another wife [*adhivedanika*], what has been given to her by kindred; as well as her perquisite [*Sulka*,], and a gift subsequent [*Anvádheyika*], are a woman's separate property."(5)

(1) II. Cole. Dig., 532, cccciii.
(2) Brihaspati, xxv. 75.
(3) Manu, ix. 194.
(4) Yájñavalkya, ii. 143.
(5) Vishṇu, xvii. 18.

3 In explanation of property *given before the nuptial fire* [*Adhyagni*] and the other kinds, Kátyáyana says: "What is given to women at the time of their marriage, near the nuptial fire, is celebrated by the wise as woman's property bestowed before the nuptial fire [*Adhyagnika*]. That again, which a woman receives whilst she is conducted from her father's house [to her husband's dwelling] is instanced as the property of a woman, under the name of gift presented in the bridal procession [*Adhyáváhanika*]. What has been given to her through affection by her mother-in-law, or by her father-in-law; or has been offered to her in return for her prostrations before them, is denominated an affectionate present [*Prítidatta*]. What has been received by a woman subsequent to her marriage, from the family of her husband, is called a gift subsequent [*Anvádheyika*], and so is that which has been similarly received from her own family: Whatever is received by a woman as the value of household utensils, of beasts of burden, of milch cattle, or ornaments of dress, or for work, is called her perquisite [*Sulka*]."(1) The meaning is, when the bride does not [as usual] obtain household utensils and the rest, then, whatever is given to her at the time of her marriage as the price of them, is termed her perquisite. What she receives on her supersession [*adhivedanika*] is explained by Yájñavalkya: "To a woman whose husband marries a second wife, let him give an equal sum [as a compensation] for the supersession, provided no separate property have been bestowed on her: but if any have been assigned, let him allot half."(2) *Half*, here means only so much as will [when added to her own property, make it] equal to the [prescribed] amount payable for supersession.

4. Devala: "That which a husband has promised for separate property [*stridhana*] must be made good by his sons, even as a debt."(3) *Promised*, to his wife [*striyai*].

5. On the subject of giving property to women, Kátyáyana further declares: "Separate property, excepting immoveables, is to be given to women by their father, mother, husband, brother, and kindred, according to their means, as far as two thousand."(4) The wealth to be given excludes immoveable property and must not exceed two thousand panas, according to Madana. So Vyása: "A present, amounting to two thousand [panas] at the most, may be given to a woman, out of the wealth."(5) And this sum, of two thousand [panas] at the outside, is to be given every year, so that in a period of many years, more would by this [means be given]. If they are able, even immoveable property may be given, according to the same, [Madana].

6. But, in property given to a woman with a view of cheating the heirs out of it, as well as ornaments or the like, given to her

(1) II. Cole. Dig., 585, 586, 587, cccclxiv—vii. (3) Not found.
(2) Yájñavalkya, ii. 148. (4) Not found in Cole. Dig.
(5) II. Cole. Dig., 600, cccclxxxii.

merely for the purpose of wearing, a woman has no ownership [or property]; for thus says Kátyáyana: "But whatever has been given to women with a fraudulent design, as well as entrusted to them for use, by their father, brother, or their husband, is declared not to be women's property, [*stridhana*]."(1)

7. In what they have earned by the arts, or obtained from friends or others than parents or the rest, women have no property; for thus says the same author: "The wealth, which is earned by mechanical arts, or which is received through affection from any other [but the kindred], is always subject to her husband's dominion. The rest is pronounced to be the woman's property."(2) However, though a text says: "A wife, a son, and a slave, are [in general] incapable of property [*Nirdhana*]: the wealth which they may earn, is acquired for the man to whom they belong:"(3) it also relates [only] to wealth earned by mechanical arts and the like. It is moreover agreeable to reason, to refer this also to their not having absolute dominion in wealth received on their supersession [*Adhivedanika*] and the rest.

8. Again, though Manu says: "A woman should never make expenditure from the wealth of her kindred common to [her and] many; or even from the property of her lord without his assent."(4) *Expenditure* is disbursement; yet, in some kinds of wealth, they are declared to possess sole property, by Kátyáyana: "That which is received by a married woman, or with a maiden, in the house of her husband, or of her father, from her brother or from her parents, is termed the gift of affectionate kindred [*Saudáyakam*]. The independence of women, who have received such gifts, is recognized in regard to that property, for it was given by their kindred to soothe them, and for their maintenance." "The power of women over the gifts of their affectionate kindred is ever celebrated, both in respect of donation and of sale, according to their pleasure, even in the case of immoveables."(5)

9. But over immoveable property given them by their husbands, they do not possess full power, according to this text of Nárada: "What has been given by an affectionate husband to his wife, she may consume as she pleases, when he is dead, or may give it away, excepting immoveable property."(6)

10. The non-existence of absolute power in husbands and the rest over women's property, is declared by the same author: "Neither the husband, nor the son, nor the father, nor the brothers, can assume the power over a woman's property, to take it or bestow it: If any of these persons by force consume the woman's property, he shall be compelled to make it good with interest, and shall also incur a fine. If such person, having obtained her consent, use the property amicably, he shall be required

(1) Not found.
(2) II. Cole. Dig., 589, ccccIxx.
(3) Manu, viii. 416.
(4) Manu, ix. 190.
(5) II. Cole. Dig., 594, ccccIxxvi-1-3.
(6) *Ibid*, 595, ccccIxxvi.

to pay the principal when he becomes rich."(1) Manu: "Such kinsmen, as appropriate the wealth of women during their lives, a just king must punish with the severity due to thieves: Such ornamental apparel, as women wear during the life of their husbands, the heirs of the husband shall not divide among themselves: they who do so, are degraded from their caste."(2) *Wear*, things worn by them, and which have been given to them for the purpose by their husbands or by others. Devala: "Her maintenance, ornaments, perquisite, and gain, are the separate property of a woman; she herself exclusively enjoys it and her husband has no right to it unless in distress. If he let it go for a false consideration, or consume it, he must repay the value to the woman with interest; but he may use the property of his wife to relieve a distressed son."(3) *Maintenance*, wealth given her by her father, or the others, for the purpose of subsistence. *Gain*, interest, [or profit]. *To let go, get rid of*, and *give away*, have all the same meaning in this place. The word *son* is here used in its general sense, for [any member of] the family. Yájñavalkya: "A husband is not liable to make good the property of his wife, taken by him in a famine, or for the performance of some religious duty, or during illness, or while under restraint."(4) Here, by using the word *husband* alone, it is virtually declared that woman's private property must not be taken by any other but him, even when distressed by a famine or other calamity. *Religious duties*, such as are indispensable. *Under restraint*, in prison.

11. In some cases a husband, though unwilling, may be forced to restore it; for, says Devala: "But if the husband have a second wife, and do not show honour to his first wife, he shall be compelled by force to restore her property, though amicably lent to him. If suitable food, raiment and dwelling be withheld from the woman, she may exact her own [property,] and take a share [of the estate] *with* the co-heirs."(5) That is, *at their hands*.

12. This, however, relates to a virtuous wife, for a wicked one should receive no portion; and accordingly, the same author says: "But a wife, who does malicious acts injurious to her husband, who acts improperly, who destroys his effects, or who takes delight in being faithless to his bed, is held unworthy of separate property."(6) And again: "Wealth was conferred for the purpose of defraying sacrifices; therefore distribute wealth among honest persons, not among women, ignorant men, and such as neglect their duties."(7)

13. The right of succession after a woman's death to that [part of her] private property which is entitled a gift subsequent [*Anvádheya*] is thus settled by Manu: "What she received

(1) II. Cole. Dig., 594, ccccIxxv.
(2) Manu, viii. 29.
(3) II. Cole. Dig., 597, ccccIxxviii.
(4) Yájñavalkya, ii. 147.
(5) II. Cole. Dig., 599, ccccIxxxi.
(6) *Ibid*, 602, ccccIxxxiv.
(7) *Do*.

after marriage [*Anvádheya*] from the family of her husband and what her lord may have given her through affection shall be inherited, even if she die in his life-time, by her children [*Prajá*]."(1) The term *children* is thus explained by the same author: "On the death of the mother, let all the uterine brothers, and the uterine sisters, equally divide the maternal estate."(2)

14. When, from non-existence of daughters and the rest, the right of inheritance devolves even on the sons, from their connexion, then it becomes reciprocal. When this right is taken up by unmarried daughters, then [the sons' succession arising from] that connexion, is at an end: but, according to the Mitákshará, 'it is not declared that the succession pertains reciprocally to the brothers and unmarried sisters;' yet, it has been said by others: 'It is declared that there is no original connexion of sons and daughters, in property received by their mother after marriage [*Anvádheya*], or given by her husband through affection [*Prítidatta.*]'

15. The distinction in succession among daughters is pointed out by Manu: "A woman's property goes to her children, and the daughter is a sharer with them, provided she be not given away; but if married, she receives a mere token of respect."(3) *Is a sharer*, shares equally with the sons. *Not given away*, unmarried. It means, that if there be one [unmarried], then the married [daughter] receives a mere token of respect, that is, only something very small. If there be no unmarried daughter, the share of the married daughter is equal to that of the brothers, according to the text of Kátyáyana: "Married sisters shall share with [brothers or] kinsmen."(4)

16. Some trifle also must be given to the daughters of those daughters, according to the text of Manu: "Even to the daughters of those daughters something should be given, as may be fit, from the assets of their matern[illegible] grandmother, on the score of natural affection."(5)

17. But all acquired at marriage [*Yautaka*] goes to the unmarried daughter alone, not to the son. So a prior text of the same: "Property given to the mother on her marriage [*Yautaka*] is inherited by her [unmarried] daughter."(6) *Property given on her marriage*, whatever is received by her at the time of marriage or other [ceremony] whilst seated together with her husband; for, according to Madana: 'The word *Yautaka*, is, in the Nighantu, derived from their being then joined together [*Yuta*].'

18. In respect to woman's property, before enumerated in the texts of other sages, distinct from that acquired subsequent to marriage [*Anvádheya*] or through their husbands' affection [*Prítidatta*], these distinctions are declared by Gautama: "A woman's

(1) Manu, ix. 195.
(2) *Ibid*, ix. 192.
(3) Not found.
(4) II. Cole. Dig., 607, ccccxciii.
(5) Manu, ix. 193.
(6) *Ibid*, ix. 131.

property goes to her daughters, unmarried or unprovided."(1) *Unprovided*, destitute of wealth.

19. The daughter of a Bráhmiṇí wife, however, shall take the wealth of her step-mother; thus Manu: "The wealth of a woman, which has been in any manner given to her by her father, let the Bráhmiṇí damsel take; or let it belong to her offspring."(2) By giving the particle '*or*' the sense of '*and*,' we have it, 'and shall be shared by [her issue].' Some say, that the word Bráhmiṇí is used to denote any girl of equal or superior caste, but the proof of this must be well examined.

20. If there be no daughters, then the issue of those daughters succeed, according to the text of Nárada: "Let daughters divide their mother's wealth; or, on failure of daughters, their male issue [*tad anvaya.*]"(3)

21. A distribution among daughters by different mothers, as well as among the different daughters' sons, to be just, must be apportioned after the example of that prescribed for the sons of different fathers, where the partition is according to their fathers' shares [not to the number of the sons of each father.]

22. However, Yájñavalkya says: "The daughters share the residue of their mother's property, after payment of her debts, and the issue succeeds in their default."(4) And here again, some say, the word *issue* [*anvaya*] has reference to the offspring of the daughters; whilst others hold, that if she leave no daughter, even her sons may take it, since the word *tad* in the text of Nárada above, distinctly points out the mother alone; and this [first] doctrine agrees with custom. *The residue after payment of her debts*; on this subject those acquainted with the ancient law have declared, that the sons alone must take the property, [if only] equal to, or less than, the amount of debt.

23. If daughters or the rest do not exist, the sons, grandsons, and the rest must take it, for thus it is declared by Kátyáyana: "But on failure of daughters, the inheritance belongs to the son."(5)

24. This right of inheritance, of daughters and the rest, in the mother's property, exists only in wealth given before the nuptial fire and the other [kinds] above recorded in the texts [paras. 1—2—3,] specifying woman's property; for, if relating to all wealth in which their mother has any property, it would contradict those texts [limiting it to six.]

25. From this we must understand, that the often repeated term 'woman's property,' which Brihaspati, Gautama, and the rest, have adopted, for example: "A woman's property goes to her daughters," [para. 18,] and the like, relates even to the texts above delivered. As many again as, even without actually keeping the

(1) Gautama, xxviii. 24.
(2) Manu, ix. 198.
(3) Nárada, xiii. 2.
(4) Yájñavalkya, ii. 117.
(5) II. Cole. Dig., 607, ccccxciii.

phrase, 'woman's property,' have parallel expressions, such as, 'divide the maternal estate,' [Manu, para. 13,] or the like, all those in like manner have reference to the same texts, as it is economical to refer them all to the same source.

26. However, the text of Yájñavalkya: "Let sons divide equally both the effects and the debts, after [the death of] their two parents:"(1) relates to [what is] acquired by the act of partition and the like, with the exception of that declared in the above texts [as woman's property]. From this it is clear that, if there be daughters, the sons or other heirs even succeed to the mother's estate, other than that before described.

27. Again, if there be no offspring of either sex, the further [succession] is declared by Yájñavalkya, referring to the above-mentioned woman's property: "Her kinsmen [*Bándhavá*] take it, if she die without issue."(2)

28. The same author expounds the succession of kindred [*Bándhavá*] to be according to the different kinds of marriage: "The property of a childless woman married in the form denominated Bráhma, or in any of the other four [unblamed modes of marriage,] goes to her husband: but if she leave progeny, it will go to her daughters; and in other forms of marriage [as the Ásura, &c.] it goes to her father, and mother, on failure of her own issue." (3) [In the one case,] if there be no husband, then the nearest kin to her in his [*tat*] own family takes it; and [in the other case], if her father do not exist, the nearest to her in [her] father's family succeeds; [for the law that:] "To the nearest sapiṇḍa, the inheritance next belongs," as declared by Manu denotes, that the right of inheriting her wealth, is derived even from nearness of kin to the deceased [female] under discussion—and, though the Mitákshará holds, 'that on failure of the husband, it goes to his [*tat*] nearest kinsmen [sapiṇḍa] allied by funeral oblations;' and, 'on failure of the father, then to his [*tat*] nearest sapiṇḍas;' yet, from the context it may be demonstrated, that her nearest relations are his nearest relations; and [the pronoun *tat* being used in the common gender,] it allows of our expounding the passage 'those nearest to him, through her, in his own family:' for the expressions are of similar import.

29. *In the Bráhma or in any of the other four*, relates to the Bráhminical class, on account of these [rites] being the only ones lawful in respect to them. But as the Gándharva rite is also lawful to the Kshatriyá class and the rest, so also, the wealth of her who has been married according to that form devolves on her husband alone. And so Manu: "It is ordained, that the property of a woman married by the ceremonies called Bráhma, Daiva, Ársha, Gándharva, or Prájápatya, shall go to her husband, if, she die without issue. But her wealth, given on the marriage called Ásura, or on either of

(1) Yájñavalkya, ii. 117.
(2) *Ibid*, 144.
(3) Yájñavalkya, ii. 145.

the two others [Paisácha and Rákshasa] is ordained, on her death without issue, to become the property of her mother and her father."(1)

30. On failure of the husband of a deceased woman, if married according to the Bráhma or other [four] forms; or of her parents, if married according to the Ásura or other two forms, the heirs to the woman's property, as expounded above, are thus pointed out by Brihaspati: "The mother's sister; the maternal uncle's wife; the paternal uncle's wife; the father's sister; the mother-in-law, and the wife of an elder brother, are pronounced similar to mothers. If they leave no son born in lawful wedlock, nor daughter's son, nor his son, then the sister's son and the rest shall take their property." (2) Here must be understood, 'on failure both of the daughter, and also of her daughter,' because only on failure of them does the right of inheritance pertain to the son born in wedlock, or to the daughter's son.

31. In respect of property given by the kindred [*Bandhu*] at an Ásura marriage or the like, Kátyáyana says: "That which has been given to her by her kindred, goes, on failure of kindred, to her son."(3)

32. But on the subject of the perquisite, Gautama holds: "The sister's perquisite belongs to the uterine brothers after [the death of] the mother."(4)

33. But what Sankha says: "The lover [may take back] his nuptial present,"(5) must be understood of one, dying previous to the celebration of the marriage. Here it is further remarked by Yájñavalkya: "If she die [after troth plighted], let the bridegroom take back the gifts which he had presented, paying, however, the charges on both sides."(6) The meaning is, that the husband may take back, if his bride be dead, what remains of the perquisite previously given, after calculating the expenses, incurred by himself and by her father.

34. On some points Baudháyana records a distinction: "The wealth of a deceased damsel, let the uterine brothers themselves take. On failure of them, it shall belong to the mother; or if she be dead, to the father."(7) Those skilled in the ancient law have declared, that this relates to ornaments or the like, presented by the maternal grandfather and the rest, at the time of betrothal, to a girl [who afterwards] dies before completion of the marriage. Here ends the subject of woman's property.

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(1) Manu, ix. 116-7.
(2) Brihaspati, xxv. 88 and 89.
(3) Not found.
(4) Gautama, xxviii. 25.
(5) II. Cole. Dig., 619, ccccxx.
(6) Yájñavalkya, ii. 146.
(7) Not found.

SECTION XI.

On exclusion from inheritance.—(Anaṁsa).

1. Yájñavalkya says: "An impotent person, an outcast and his issue, one lame, a madman, an idiot, a blind man, and a person afflicted with an incurable disease, as well as others [similarly disqualified], must be maintained, excluding them, however, from participation."(1) *His issue,* means the offspring of an outcast.

2. If, after division, virility or the other [absent qualification] be regained, by medicine or other means, the person will then receive his share, like a son born after partition.

3. Manu says: "Impotent persons and outcasts; persons born blind or deaf; madmen, idiots, the dumb, and such as have lost a sense [or limb, *nirindriya*], are excluded from a share of the heritage."(2) *Have lost a sense,* deprived of the nose [or smell,] or the like. Nárada also declares: "An enemy to his father, an outcast, an impotent person, and one formally expelled (*apayátrita*), take no shares of the inheritance, even though they be legitimate: much less if they be sons of the wife by an appointed kinsman. One afflicted with an obstinate or an agonizing disease, an idiot, one insane, blind, or lame, must be maintained by the family, but their sons take the shares [of their parents.]"(3)

4. *Formally expelled,* one turned out by his kinsmen with the ceremony of kicking down a waterpot(*a*) or the like, for high treason [*rájadroha*] or a similar crime, according to Madana. It properly applies to one who goes across the sea in a vessel or the like, to another quarter of the globe, for the sake of a livelihood; [for] communion is not permitted with a Bráhmin [*deśa*] who has passed the sea in a ship even though he has performed penance for it;" therefore, connexion with such a one in this age of the world, is reprehended. And no form is laid down for performing the ceremony of kicking down the waterpot, or for expulsion for high treason. Sankha and Likhita: "The heritable right of him who has been formally degraded [*apayátrita*], and his competence to offer oblations of food and libations of water, are extinct."(4)

5. Vasishṭha: "They who have entered into another order, are debarred from shares."(5) Here are meant the perpetual student, the hermit, and the ascetic. Kátyáyana: "But *the son of a woman married in irregular order,* as well as he who is produced

(1) Yájñavalkya, ii. 140.
(2) Manu, ix. 201.
(3) Nárada, xiii. 21 and 22.
(4) II. Cole. Dig. 423, cccxviii
(5) Vasishṭha, xvii. 52.

(*a*) A person guilty of heinous crimes is expelled from caste and society by the following process:—A pot is carried by a woman to some public place in the village and when the relatives of the person and other villagers are assembled, the pot is kicked and broken. All the relatives observe pollution for a day and all connection between that person and his relatives ceases even in respect of acts of mourning, impurity, and libations of water. Manu, XI. 184.

through a kinsman [sagotra], and an apostate from a religious order, never obtain the inheritance."(1)

6. [Produced] *through a kinsman*, means one born of a woman married to one of her own [sagotra] relations. *The son of a woman married in irregular order*, means, according to some, the *kshetraja, kánína*, and other sons. But when the marriage of a younger daughter has been celebrated whilst her eldest sister is still unmarried, they are then both said to be 'out of their order;' and this is the proper application of the term [*akrama.*] If he be of the same class as his father, his qualification for inheriting is declared by the same author: "But the son of a woman married in irregular order may be heir, provided he belong to the same caste with his father: and so may the son of a man, belonging to a different [but superior] caste by a woman espoused in the regular gradation."(2)

7. Also, if sons be begotten by a husband on a wife sprung from a higher class, they shall not take the inheritance, for thus says the same author: "The son of a woman married to a man of inferior caste is not heir to the estate. Food and raiment for life are considered to be due to him by his kinsmen."(3)

8. If there be other sons endowed with good qualities, the inheritance is not to be taken by a vicious one; for says Manu: "All those brothers, who are addicted to any vice, lose their title to the inheritance."(4) Brihaspati: "Though born of a woman equal in class, a son destitute of virtue is unworthy of the paternal wealth; it is declared to belong to those kinsmen who offer funeral oblations to the deceased, and are of virtuous conduct. A son redeems his father from debt to superior and inferior beings; consequently there is no use of one who acts otherwise."(5)

9. But all those excluded from participation must be maintained during the rest of their lives, by those who get the estate, from this text of Manu: "But it is fit, that a wise man should give all of them food and raiment, without stint, to the best of his power: for he who gives it not, shall be deemed an outcast,"(6) (*without stint*, signifies 'as long as they live,') as well as from the foregoing one of Yájñavalkya [para. 1:] "Those excluded from inheritance, must still be maintained."

10. Those who have entered into another order, and outcasts, as well as their respective sons, are not to be maintained. Thus Vasishṭha says: "They who have entered into another order are debarred from shares [para. 5]: as also an impotent man, a madman, and an outcast; but let the impotent and the mad man, (receive) a maintenance."(7) Here, the maintenance of two only being mentioned, is meant as an indication that the others are excluded. Devala:

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(1) II. Cole. Dig., 439, cccxxxvii.
(2) Do. do.
(3) Do. do.
(4) Manu, ix. 214.
(5) Brihaspati, xxv. 42 and 43.
(6) Manu, ix. 202.
(7) Vasishṭha, xvii. 52, 53 and 54.

"When the father is dead [as well as in his lifetime,] an impotent man, a leper, a madman, and an idiot; a blind man, an outcast, the offspring of an outcast; and a person fraudulently wearing the token [of religious mendicity,] are not competent to share the heritage: food and raiment should be given to them, excepting the outcast."(1) *Wearing the token*, assuming a prohibited mark [linga]. Baudháyana: "Let the co-heirs support with food and apparel those who are incapable of business, as well as the blind, idiots, impotent persons, those afflicted with disease and calamity, and others who are incompetent to the performance of duties, excepting, however, the outcast and his issue." (2) Even those degraded from the life of an ascetic, as well as their sons, are neither of them to be maintained according to Madana and others.

11. But the blameless sons, even of one from these causes disinherited, shall take a share, according to the text of Vishnu: "The legitimate sons even of these, [are sharers of the patrimony]; but not the sons born to a degraded man after the commission of the act which caused his degradation, nor those who are procreated in the inverse order of the classes: their sons do not participate, even in the property left by the paternal grandfather."(3) and this of Yájñavalkya: "But their sons, whether legitimate, or the offspring of the wife by a kinsman [*kshetraja*], are entitled to allotments, if free from similar defects."(4)

12. Yájñavalkya delivers a special rule concerning the daughters and wives of these: "Their daughters must be maintained likewise, until they are provided with husbands. Their childless wives, conducting themselves aright, must be supported; but such as are unchaste, should be expelled: and so indeed should those who are perverse."(5) If she be *unchaste*, a woman must be turned out of doors, and without a maintenance. A *perverse* woman also should be turned out of doors, but a maintenance must be provided for her, according to Madana, and others.

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(1) II. Cole. Dig., 426, cccxxi.
(2) Baudháyana, ii. 2, 3, 37—40.
(3) Vishnu, xv. 3—4.
(4) Yajnavalkya, ii. 141.
(5) *Ibid*, 141 and 142.

SARASVATI VILASA.

On Partition of Heritage.

1. Partition of heritage is explained by King Pratāparudradeva son of King Purushottama.

2. In the preceding chapter the law of the connection between man and woman has been explained. But here division among men and women is begun. Therefore the connection between these two chapters is one of cause and effect.

3. Nor can it be said that as according to the Smriti, 'There can be no division between husband and wife' (1) there can certainly be no division between man and woman. Division among man and woman will be declared.

4. Moreover, as division takes place sometimes between men, sometimes between women, and sometimes between men and women, there is nothing lost.

What is daya (Heritage.)

5. Heritage is wealth common to father and son; for the Smriti says:—"The wise call by the name of *daya*, the paternal wealth which is fit to be divided.(2) 'Vibhaktavyam' means 'fit for division.'

6. Brihaspati also (says):—"What wealth the father gives or is given by the father to the sons is called *daya*."(3) The word father in the nominative case ought to be supplied in respect of the verb *gives*. Thus the word *daya* always means 'that which is given.' Thus the definition of *daya* is 'Wealth common to the father and son.'

7. Sangrahakára also (says):—"Wealth which has descended through the father and which is descended through the mother is denoted by the word *daya*. The division of that is now explained."

8. The definition given by Bharuchi, Apararka and others is 'paternal wealth capable of division is *daya*.' That alone is correct, because it is applicable to cases of partition of religious duties and wealth alike.

9. Nor can it said that as religious duties as Agnihotra, Vaisvadeva, &c., are not paternal wealth, the definition that *daya* is partible paternal wealth cannot apply in their case, for from the text of Vishṇu, "Paternal wealth is of two kinds—that which is to be enjoyed and that which is to be practised"(4) (it follows) that that which is to be enjoyed is land, cows, &c., and that which is to be practised is Agnihotra, &c. Thus Agnihotra, &c., which is to be performed is declared to be paternal wealth.

10. Therefore only Yájñavalkya says:—"A householder should perform karma enjoined by Smritis in the matrimonial fire

(1) Apastamba, ii. 6, 14, 16.
(2) Found in the Nighantu (Lexicon).
(3) Not found.
(4) Do.

or in that which was brought at the time of partition, and those enjoined by the Smritis, in the sacrificial fire."(1) Karki says : "From its connection with the marriage, it continues to be the matrimonial fire even afterwards."

11. From the expression 'or even in that brought at the time of division,' partition of Agnihotra, &c., has been declared. And such Agnihotra, &c., must be admitted to be paternal alone. Otherwise the text "should perform all karma enjoined by Smritis in the matrimonial fire" will be violated.

12. Karki here says :—'To the brotherless, the matrimonial fire; but to brothers, that alone which was brought at the time of partition. This is settled. Therefore also *dayakalahrite* means 'accepted as one's share at the time of partition.'

13. Bharuchi (says) :—"In case of partition after (father's) death, the brothers shall divide the fire brought by the eldest from the house of a srotriya. In this case, that the fire is paternal is eulogistic. At partition during the (father's) lifetime, they shall divide the fire brought by the father. In this case the fire is paternal in the primary sense of that term, being brought by the father; for it is only such fire that was brought by the father from his brothers, &c.

14. Some here say :—The expression brought at the time of division, &c.,' lays down another period of beginning the Agnihotra. Bharuchi and others do not endorse this (interpretation), for in that case, the fire which is not purified may be used for religious duties. Some, however, say that from the Smriti 'to some at the time of partition, &c.,' another period for bringing the fire is laid down.

15. The truth here is this. The matrimonial fire is opined to be of two kinds—temporal and spiritual.

16. If it be temporal, then, the recitation of the mantras to be recited in the particular context being intended to ensure the validity of the gift according to the Vedas it only purifies the doer and not the fire itself. It is not reasonable to say that the mere act of bringing or churning purifies. The statement in Karki's Commentary that marriage may be performed with fire obtained by churning or brought from the house of a srotriya, produced from crystal, or fire in the forest, fire brought and churned are placed on a footing of equality with fire produced from crystal or raging in a forest. Nor is it reasonable to say that the fact of its being produced from crystal and the fact of its being the fire of the forest are in themselves in respect of such fires, respectively, the purifying circumstances. Therefore the matrimonial fire is only temporal. That is why Ápastamba in the event of the loss of the fire says, that having brought the fire from the house of a srotriya, having tasted and having recited the expiatory mantra 'Ayascha, &c.,' one should perform the homa as before according to the text, and if the fire is extinguished the fire should be churned or brought

(1) Yájñavalkya, i. 97.

from the house of a srotriya. He should perform homa recitin the mantra 'Ayascha, &c.,' and do the Agnihotra. The Vrittikára says that the same rule should be observed in case the fire is lost. It is therefore alone that the many texts which prohibit the separate performing of Agnihotra and Vaisvadeva by coparceners living in union become pertinent. The drift is that division takes place, among sons, of the fire brought at the time of the sacrifice.

17. According to the view that matrimonial fire is spiritual, the spiritual nature of the fire is deduced from the srouta character of it according to the rule "Saying 'Bhur, bhuvasvarom', one should place the fire." Therefore alone do they say that the word *va* indicates two alternatives, as then alone the rules enjoining the individual performance of Agnihotra and Vaisvadeva become pertinent. Therefore alone has it been said by Ásvaláyana that in the event of the loss of fire, one should perform all purifying ceremonies down to Yugaloja and perform the Agnihotra again. The portion, 'All karma enjoined by Smritis, in the sacrificial fires', is for the purpose of indicating that under no circumstances there can be a division of the sacrificial fires.

18. Here Lakshmidhara and others say: "In the view that matrimonial fire is spiritual, separate performance itself constitutes division. If it is regarded as temporal the individual maintaining of the fire constitutes division." This will be explained at length when deciding doubts regarding partition.

19. Asaháya, Vijñánesvara Yogi and others say that *daya* means wealth which becomes the property of another solely by reason of his relation to the owner.

20. Bháruchi, Aparárka and others do not endorse that (view), because all causes of property do not answer to that definition.

21. Nor can it be urged that 'sale, &c.,' are excluded by the particle *eva* (solely) because it is not said of a purchaser in the world: "The heir takes the *daya*." If it were so, then, as women are not fit to share in the wealth according to the Smritis, 'women and persons wanting an organ do not share.' *Stridhanam* cannot be denoted by the word *daya*. That will be dilated upon later on.

What is partition?

22. Bháruchi says that *vibhâga* (partition) is the division of either of the two—wealth and religious duties.

23. Vijñánesvara Yogi, however, says that partition is the adjusting of the ownerships of many persons in the aggregate wealth by fixing every one of them to portions thereof.

24. Bháruchi will not allow this, because this does not take place at a partition of religious duties.

25. Partition of religious duties consists in the division of religious duties alone, *i.e.*, the separate performance of Vaisvadeva, the five great sacrifices, the rites in honor of the manes, &c.

26. Therefore, in the case of some that are extremely indigent, partition of religious duties should be made, there being no wealth (to divide). As Gautama says: "By partition religious duties increase;"(1) those who desire increase of religious duties should make a partition of religious duties alone.

27. Therefore alone Vishṇu says:—"Or let him divide religious duties alone."(2) The expression 'of those who are entirely penniless' must be supplied.

28. From this it is known that without any formality, partition can be effected by mere intention, just as the making of an appointed daughter can be effected by mere intention without any formality.

29. In the case of those who have wealth, partition of religious duties should be made only after partition of wealth; for religious duties as Vaisvadeva, etc., should be performed by the divided coparceners according to the text: "Divided brothers should perform and not the undivided under any circumstances."

30. Therefore also in the case of those who have no wealth, the separate performance of religious duties with or even without others' consent constitutes a partition of religious duties; but in the case of the rich, partition of wealth takes place.

31. Thus partition is of two kinds.

32. Therefore alone is it said by Vishṇu: "Partition is of two kinds, *i.e.*, based on religious duties and based on wealth."(3) Here although the term *daya* is generic, it is used to denote wealth, as it is used in a restrictive sense. By the word *dharmá* is here denoted anything which aids dharmá as Agnihotra, etc.

33. Partition of religious duties is certainly agreeable to Manu, Yájñávalkya and other Smriti writers, to Asaháya, Medhátithi, Vijñánesvara, Aparárka and other commentators of these Smritis, to the Nibandhakára and to the author of the Chandriká.

34. For instance, by the text: "Those brothers also who live for ten years performing their religious duties and attending to their own affairs separately, should be understood as divided in respect of the paternal wealth,"(4) partition of religious duties is declared. Here the separate performance of religious duties alone of one's own will without consent of others for a period of ten years constitutes partition.

35. Just as with reference to the text: "What else is acquired by himself without detriment to the father's wealth as presents from a friend, and marriage gifts does not belong to his co-heirs,"(5) the acceptance of the friendly present, etc., itself constitutes a partition in the case of one who has no other wealth than the friendly gift, etc.

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(1) Gautama, xxviii. 4.
(2) Not found.
(3) Not found.
(4) Nárada, xiii. 41.
(5) Yajñavalkya, ii. 118.

36. It should be understood that it is even so here.

37. Therefore alone it is said by Manu :—"Thus has been explained the religious duty of husband and wife named the marriage-union as also the obtaining of issue in distress. Hear ye Daya Dharmá or law of inheritance."(1)

38. Here Bháruchi says :—"By the term *Daya Dharmá*, partition of religious duties and partition of wealth are indicated."

39. The meaning of the text is, "Hear partition of wealth and partition of religious duties to be explained by me." Although by the term *daya* which denotes 'partible wealth', religious duties are also included, still for the purpose of clearness, the term *Daya Dharmá* has been used.

40. From the paternal wealth] this is an ablative, the *lyap* which should follow being omitted.

41. Some say that this indicates *a fortiori* that the separate performance of religious duties for a period of ten years, even while being supported out of the paternal wealth, is a cause of partition.

42. But others say that the *lyap* being supplied (the expression means) 'having abandoned the paternal wealth'; for otherwise this would conflict with the text of Manu and others 'without detriment to the father's wealth,' etc.

43. This alone is right. So does the Nibandhakára say "This view alone is the best."

The time, manner, etc., of partition.

44. When, by what mode, by whom, and of what kind of wealth it is made, is explained according to the Sastras.

45. Of what kind of wealth] of the paternal, maternal, etc.

When] when the mother's menstruation has ceased, etc.

By what mode] by the mode of equal and unequal distribution, etc.

By whom] by the father, mother, sister, etc.

46. That branch of law where these fourfold necessary preliminaries are explained is designated *Dayavibhaga*.

47. Here Sangrahakára lays down a special rule :—"There may be a division of the paternal wealth, though the mother be living; for the mother apart from her husband has no independent ownership. So also there may be a partition of the maternal wealth, though the father be alive : for, the issue living, the husband is not lord of his wife's wealth." Of the word *Pati* twice occurring, one means 'lord' and the other 'husband.'

48. By this text it is in effect said that no partition can be made by the sons of the paternal wealth while the father is living and of the maternal, while the mother is living.

(1) Manu, ix. 103.

49. Accordingly Manu says: "After the father and the mother, let the brothers having assembled together divide the parental wealth; for they are powerless while the parents are alive."(1)

Aneesáh means 'not independent.'

50. So Háríta also: "While the father is alive, the sons are not independent in respect of receipts, disbursement and correction."(2) 'Árthadanam' means 'visible enjoyment of wealth.' 'Visargah' means 'disbursement.' 'Akshepa' means 'chastisement for offences committed by slaves and other attachés.' Dependence] desistance from the enjoyment of wealth, etc., according to one's pleasure without the permission of the father. Dependence in respect of religious duties is similarly the non-performance of sacrifices, etc., separately.

51. The author of the Chandriká says, that all this considered, it should be understood that religious duties, Agnihotra, etc., should be performed by the son who is permitted by the father and not by him who is not permitted.

52. Apararka says that the son though not so permitted is still entitled to perform Agnihotra and other duties.

As it has been already stated that there can be no determination where practice varies, we do not repeat it here.

53. As for what Devala also says: "When the father is dead, the sons may divide the paternal wealth; for they have no ownership while their father is alive and free from defect;"(3) here 'no ownership' means 'no independence;' for the right by birth of men is established in the world. This will be explained at length later on. The use of the expression 'free from defect' indicates that if the father though having defects be alive, the sons are not dependent on him.

54. Therefore where the father, though alive, has defects, such as inability, the eldest (son) is independent in the matter of receipt, and expenditure of money, etc. That the younger brothers are subject to the eldest should be known.

55. Therefore alone Sankha and Likhita say:—"The father being incapable, the eldest son should manage the family affairs, or his next younger acquainted with them, with his permission."(4) By 'his' the eldest is denoted; for then he alone is independent. The term 'karyajna' indicates that the word 'anantara' (next) points to the next brother. The author of the Chandriká says that the term 'incapable' includes by analogy 'distressed' and the like.

56. By the use of the word 'incapable' it should be understood that partition of the paternal wealth can take place without the wish of the father and at the will of the sons alone when the father, from old age, etc., is reduced to dependence.

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(1) Manu, ix. 104.
(2) II Cole. Dig., 199, viii.
(3) II. Cole. Dig., 196, v.
(4) *Ibid*, 203, xvii.

57. So Nárada also says: "The father who is diseased or swayed by wrath or whose mind is engrossed by some object of desire or who acts contrary to the Sacred Codes, has no power to institute a partition."(1) But that the sons alone have the power follows.

58. Therefore alone the same author says: "Or let the father by himself separate his sons while in the proper age."(2) In the proper age] with his independence unchecked.

59. From the particles '*eva*' and '*va*', it follows that in the absence of defects, such as, being diseased, etc., the father alone has power to make a partition, and that otherwise the sons have.

60. "Let the sons equally share the wealth of the father after his death when the mother's menstruation has ceased and when the sisters have been married. Also when the father's sensual passions have been extinguished or when the father has no desires."(3) *Ramane* means 'in the matter of sexual enjoyment or power to have sexual enjoyment.'

61. By the expressions 'when the father has no desires' and 'when the mother's menstruation has ceased' it should be inferred that there can be no partition where the father wishes to marry another wife.

62. Therefore by the expression 'after the father's death,' one period of partition is stated and that is partition after father's death. By the expression 'when the mother's menstruation has ceased', the period of partition during father's lifetime is stated. Thus two periods of partition have been stated.

63. As for the father's wish, that points to no separate period of partition, for it is not distinct from partition during the father's lifetime. Sankha and Likhita thus state the period of partition:— "Common residence is enjoined on the brothers during the lifetime of the parents. Even after their death their living together is conducive to prosperity. Let them well live together in the same place; living together, they may attain prosperity."(4) The purport is they have not then to expend money separately.

64. But by partition religious duties increase. So Gautama also says: "By partition there is an increase of religious duties."(5)

65. If questioned how comes such increase, Nárada says:— "Among undivided brothers the performance of religious duties is single. But in case of partition their religious duties also will have to be separately performed."(6)

66. Dharmá or virtue is produced by the worship of the manes, of the deities, etc. So Brihaspati also says:—"Of those who live in commensality, the worship of the manes, the deities and Bráhmins

(1) Nárada, xiii. 16.
(2) *Ibid*, xiii. 4.
(3) *Ibid*, xiii. 2 and 3.
(4) II. Cole. Dig., 204, xix,
(5) Gautama, xxviii. 4.
(6) Nárada, xiii. 37.

is single; but in the case of divided brothers the same will be performed in every house."(1)

67. Therefore even to undivided brothers the religious merit produced by Agnihotra, etc., performable by them certainly accrues. But it should be understood that on partition an increase of religious duties has been declared according to the two views of Gautama, etc.

68. Here as the theory of equal partition is accepted by all, Yájñavalkya says that in every case in which the father should, of his own free will, accept equal partition, his wives, having male issue, should be made partakers of equal shares. "If equal shares be allotted, his wives should be made partakers of equal shares."(2)

69. If even in old age the father, of his own choice, gives his sons equal shares with himself, each of his wives shall take shares equal to the share of the father. From this it should be considered that the text of Ápastamba: "There is no partition between husband and wife"(3) applies where the husband and the wife are declared to make but one both together. So says Bháruchi.

70. Therefore alone Yájñavalkya says:—"Among brothers, among husband and wife and also among father and son undivided, suretyship, debt and evidence are not permitted by the Smritis."(4)

71. Here Vijyñanayogi says: "There is no prohibition against suretyship, &c., between husband and wife before partition, because there being no partition between them such a distinction would serve no purpose." That there is no partition has been shewn by Ápastamba in the text: "There is no partition between husband and wife." True. There is no partition in respect of religious duties performable with the aid of the Srouta and the Smarta fires or of their fruits, but not in respect of all duties and wealth. For, having said that there is no partition between husband and wife, he has stated a reason in answer to the question why there is not: "From the fact of taking the hand they become both one in respect of religious duties and their fruits."(5)

72. The meaning of this is:—"Because the Smriti 'Let the husband and the wife maintain the fire' declares their oneness in respect of religious duties from the moment of the taking of the hand, therefore from their joint authorization to maintain, their joint authority in respect of duties performable with the aid of the fire so maintained (follows)." Similarly, their authority is joint in respect of duties performable with the matrimonial fire from the Smriti: 'Duties enjoined by Smritis should be performed in the matrimonial fire,' &c. Therefore also, the authority of husband and wife is individual in respect of charitable duties which require neither of the two fires. Similarly, their oneness in respect of the

(1) Brihaspati, xxv. 6.
(2) Yájñavalkya, ii. 115.
(3) Apastamba, ii. 6, 14, 16.
(4) Yájñavalkya, ii. 52.
(5) Apastamba, ii. 6, 14, 16 and 17.

fruits of meritorious deeds—heaven, &c., is declared by the Sruti, "let them make a gift of silver," etc.

73. It should be understood that their oneness obtains in respect of the fruits of all those meritorious deeds in the performance of which their authority is joint and not even in respect of the fruits of conservatory acts performed with the permission of the husband.

74. Their oneness in respect of ownership of wealth and of acceptance of wealth has been declared; for they do not call it theft to make a gift for good reasons during the absence of the husband.

75. True. Ownership of wealth is shewn by this, but not the absence of partition. Because having said 'in respect of acceptance of wealth' a reason therefor is stated—'since Manu and others do not call it theft in the wife to perform the necessary duties as the feeding of strangers, the giving of alms, &c., during the absence of the husband; therefore even the wife has ownership in wealth,' for otherwise this will be theft.

76. Therefore the wife may have a partition of wealth at the option of the husband but not at her choice.

77. The view of Aparárka, however, is that women have no right of partition in wealth, from the Sruti: "Therefore women and persons deficient in an organ, &c." Therefore also property should be given to wives according to the option of the husband. The word *equally* shows that her share should not be less than her husband's, but that she should be given an equal or a greater share. The word *yadi* (if) showing that it may be done according to his desire, it must be understood that the giving of a share is optional.

78. The truth here is this:—According to Bháruchi, where there are many wives, partition takes place among them alone. According to the view of Vijñánesvara and others, there is no partition with the wife alone, but wives can have partition with the sons; but according to the view of Aparárka and others, there is no partition with the wives or their equal partition with sons—but something may be given at the pleasure of the husband.

79. Here Bháshyakára says that these three views obtaining are determined by distinctions of castes. Among the Bráhmins, wives have equal partition with the sons. Among the Kshatriyás, there is neither partition with wives nor their equal partition with sons; but something should be given them at their husbands' pleasure. Among the Vaisyás and the Súdrás partition with wives obtains. They say that this determination has only custom for its origin.

Partition during father's life-time.

80. Here Sankha and Likhita say:—"Partition during father's life-time, either openly or in secret, according to law, is sanctioned."(1) The partition during father's life allowed to be made

(1) II. Cole. Dig., 205, xxi.

must be made according to legal modes openly, *i.e.* in the presence of relatives, &c., or in secret. This is the meaning.

81. Kátyáyana states the same mode:—"That partition where the parents and the brothers divide the whole wealth by equal shares, is said to be legal."(1)

Legal] not divorced from law.

82. Equal partition without distinction is declared by the Sruti, "Manu distributed wealth among his sons."(2) Because unequal partition, though found in the Sacred Codes, should not be instituted as it is opposed to the world and to other Srutis, it is restrictively ruled that they divide the common wealth in equal shares.

83. Therefore, as it is not fit to be practised in this Kaliyuga, the views regarding the deductions in favor of the eldest son, &c., are not explained.

84. For there is the prohibition: "One should not practise anything though enjoined by law, if it does not lead to heaven and is abhorred by the world."(3) Just as the injunction: "Let one sacrifice a large bull or goat for a srotriya"(4) is not to be obeyed, because it is abhorred by the world, so also the injunction to slay a barren cow according to the text: 'Slay a barren cow as a sacrifice to Varuna' is not obeyed, because it is abhorred by the world. It has also been said "Just as Niyoga (appointment to raise offspring) and the slaying of a cow do not at all exist now, so partition with deductions does not certainly now exist."

Now] In this Kaliyuga.

85. So Ápastamba also says:—"Living, let him divide the wealth among his sons equally."(5)

86. Having himself said 'equally,' having shown that in the view of some the eldest son takes all the wealth by saying: "The eldest is heir. So some say,"(6) and having indicated as the view of some partition with deductions by saying: "In particular countries black cows, black produce of the earth belong to the eldest. Conveyance of the father, the culinary vessels in the house, ornaments and money received from relatives belong to the wife,"(7) he has rejected it as being opposed to the Sacred Codes.

87. Therefore, also, the blunder found in the commentaries of Aparárka and other commentators on the text: "Or separate the eldest son with the best share"(8) is not dragged out for comment.

88. In partition during father's lifetime partition is according to (the father's) pleasure.

89. Here Nárada says:—"The father separating the sons from

(1) Not found.
(2) Apastamba, ii, 6, 14, 11.
(3) Yájñavalkya, i. 156.
(4) *Ibid*, i. 100.
(5) Apastamba, ii. 6, 14, 1.
(6) *Ibid*, ii. 6.
(7) *Ibid*, ii. 7, 8, 9.
(8) Yájñavalkya, ii. 114.

him, may take two shares."(1) This applies where the father has an only son.

90. So say Sankha and Likhita: "He, if he has an only son, may take two shares for himself."(2) *He* stands for 'the father' according to the context; 'if he has an only son' indicates that he is in old age, and that he is too old to have another son.

91. Also this rule applies only to partition of wealth and not to partition of religious duties; for there is nothing gained by taking two shares at a partition of religious duties.

92. Where the son being competent to earn wealth does not wish to have his share in the father's wealth, then he should be given what he likes to accept and be separated by the father. So Yájñavalkya says: "Separation with one competent and not wishing for a share should be effected by giving hin something."(3)

93. When, again, during the lifetime of the father, partition is instituted by the sons, even then it should be made in the mode of equal partition stated in the text of Kátyáyana: 'All wealth, etc.'; for there is no other text in the Sacred Codes indicating a different mode in respect of partition made by the sons during the lifetime of the father.

Partition after father's death.

94. So, also, in respect of partition after father's death as declared by Paithinisi: "Where the paternal wealth, etc., is divided, the shares of brothers are equal"; and as declared by Háríta: "Where the father is dead, the distribution of wealth is equal."(4)

95. The meaning is that when the father is dead, the partition of wealth made by the brothers must be made by equal shares. By 'brothers', brothers of equal caste having the same ownership are meant; for it will be pointed out later on that the impotent, etc., of equal caste are not entitled to share, and that brothers unequal in caste share unequally.

96. Yájñavalkya says that as sons share equally in the wealth of the father, so they share equally in the debts also: "Let the sons after their parents divide the wealth and the debt equally."(5) Here the debt contemplated is only the father's debts; for a debt not paternal should, according to law, be discharged by the brothers.

97. Therefore alone Kátyáyana says:—"All the debt incurred by the brother, by the paternal uncle and by the mother for the benefit of the family should be paid by the heirs at the time of partition."(6)

98. Here Kátyáyana lays down a special rule: "Debt contracted by oneself for religious duties or as an affectionate gift should

(1) Nárada, xiii. 12.
(2) II. Cole. Dig., 216, xliv.
(3) Yájñavalkya, ii. 116.
(4) Not found in Cole. Dig.
(5) Yájñavalkya, ii, 117.
(6) II. Cole. Dig., 480, cccIxxi.

be divided when found. It should not be paid out of the father's wealth."(1)

99. The meaning is that debt borrowed for religious purposes, wealth given by the father out of affection, and that which was directed by the father to be discharged by the sons, that threefold debt if known, should be divided.

Shares of wives.

100. Women being unworthy of sharing the wealth, how is the word 'share' in the text "If he make the shares equal, his wives should be made partakers of equal shares "(2) to be otherwise explained. ? How, then, has it been said by Yájñavalkya: "Of brothers dividing after father's death, even the mother takes an equal share "(3) ? How, again, by Vyása : "The childless wives of the father are declared to take equal shares with the sons, and all paternal grandmothers are declared to be equal to mothers "(4)? How also by Vishṇu : "Mothers take shares corresponding to the shares of their sons as also the unmarried daughters "(5) ?

101. If, then, women are unworthy of wealth, the statement that women, from the mother, etc., down to the daughter, take shares is illogical.

102. Not so. Here the word 'share' does not denote a partition of the wealth but means simply a portion of the whole wealth. Therefore the objection raised has no force.

So some say.

Others say that as the expression *mothers and the rest* denotes women occupying a venerable position, even a mother shall have a portion when partition is made after the father's death.

103. The view of Medhátithi has already been stated to be that these texts apply to particular castes. Vasishṭha says : "Next, partition among brothers, to await till childless wives beget sons."(6)

104. The meaning of this is that they shall wait till such of the childless wives of the father as are pregnant are confined. Brothers living together should institute a partition of wealth after knowing the sex of the child born.

105. Here, is it not the fair sense of the text that partition of wealth takes place between the brothers and the childless wives ? Why is it, then, abandoned ?

106. It is abandoned, because *till childless wives beget sons* is a contradiction and because there can be no partition with women who are unworthy of wealth.

107. Therefore alone another Smriti says : "A mother with no wealth of her own takes an equal share at a partition by the sons."

(1) II. Cole. Dig, 481, ccclxxiii.
(2) Yájñavalkya, ii. 115
(3) *Ibid*, ii. 123.
(4) II. Cole. Dig., 243, lxxxiv.
(5) Vishṇu, xviii. 34 and 35.
(6) Vasishtha, xvii, 41.

108. The meaning is that at a partition instituted by the sons after the father's death, a mother having no stridhanam of her own takes a share equal to that of a son.

109. Here the word 'mother' is used to include her co-wives, etc. It is said:—"Mothers take shares corresponding to their sons'."(1)

110. By the use of the qualification 'having no wealth of her own,' it is implied that where she has wealth of her own, she does not take a share, as her livelihood and the duties performable by her with the aid of wealth can be accomplished with such wealth. It is also implied that where such wealth alone is not sufficient for her living and for the duties to be performed by her with the aid of wealth, she does not even then take an equal share, but takes only so much of wealth as is necessary for her use.

111. Accordingly, it is implied that where the wealth to be divided is very considerable, even mothers, etc., who have no wealth do not take equal shares; but only take for their use a share, certainly less than an equal share. The qualification 'having no wealth' indicates that the mother's taking a share is based upon her necessity and not upon her legal right as heir like the brother: she does not take because of the use of the adverb 'equally,' nor is the word 'equally' rendered useless even when she takes an unequal share.

112. It has been previously stated, with reference to partition during the father's lifetime, that at the pleasure of the father, more than an equal share could be given to the wives; but here, at a partition after the father's death, the share of the mother may be equal or more than equal according to the pleasure of the brothers. And the word 'equally' is used to counteract the possibility of the brothers having to give more than an equal share, where the partible wealth is inconsiderable, even against their will.

113. Therefore alone Yájñavalkya, certainly considering all this, having stated: "If he make the shares equal his wives should be made partakers of equal portions" adds "To whom no stridhanam has been given either by the husband or the father-in-law,"(2) meaning that if stridhanam had been given, they do not take shares.

114. Therefore alone has it been stated by the author of the Chandriká:—"By this it should be considered that the mother does not share at the partition on account of her ownership, but that she takes only as much of the wealth as may be needed."

115. As for the statement of Vijñánayogi in his commentary on the text; 'Of the brothers and of the husband and wife, &c.,'(3) that even the wife has ownership in the wealth, for otherwise it would be theft, that cannot be taken as shewing her right to a

(1) Vishṇu, xviii, 34. (2) Yájñavalkya, ii. 115.
(3) Yájñavalkya, ii. 52.

share of the wealth but should be regarded as shewing just so much ownership as is required for the feeding of guests, giving of alms, &c.

116. Aparárka, however, says:—"The word *share* in 'if he make the shares equal, &c.,' denotes 'a portion of the partible wealth.' Therefore wives are not sharers. Something need alone be given to the wives at the pleasure of the husband."

117. Therefore, even according to the three views, wives are not sharers at partition but get only a portion, and that too should be regarded as already explained to depend on the possession or otherwise of stridhanam and on its amount.

118. It should be considered that, according to the view of Bhashyakára, the wives of Súdrás have a right to partition according to the practice of the world.

Shares of daughters.

119. As for what is stated by Vishṇu: "The unmarried daughters also take shares proportionate to the shares of the sons,"(1) that shows from the use of the adjective 'unmarried' that for the purpose of their marriage, they take, according to means, a portion corresponding to the shares of the sons and not that they take a share for their living, as mothers do.

120. Therefore alone has it been said by Devala:—"To the unmarried daughters also should be given a portion out of the father's wealth for the purpose of marriage."(2) The meaning is, money with which their marriage could be accomplished.

121. Therefore alone Yájñavalkya says:—"To the sisters, by giving them a fourth share from his own share."(3) The meaning of this is, 'the unmarried sisters should be disposed of in marriage by the brothers.' By doing what? By giving a fourth part of their own shares. From this it is inferred that even daughters take shares after the father's death.

122. Here the meaning is not that the sister should be given a fourth part taken from the separate share of every brother, but that she should be given a fourth part of the share of a son belonging to the same class as herself.

123. This will be explained. If the maiden be of the Bráhmin caste, then she will take a fourth of the share of a son by a Bráhmiṇí wife. How is this? If one has a Bráhmiṇí wife and a son and a daughter by her, then all the wealth of the father should be divided into two shares, one of the two shares divided again into four shares, then having given one of these four shares to the maiden, the son shall take the rest. Where there are two sons and a maiden daughter, then, having divided the paternal wealth into three shares, having divided one of these shares into four and having given a fourth share to the maiden, the two

(1) Vishṇu, xviii. 35. (2) II. Cole. Dig., 296, cxxiv.
(3) Yájñavalkya, ii. 124.

sons shall divide and take the rest. Again, if there be a son and two daughters, then, having divided the paternal wealth into three shares, having divided one of these again into four, and having given two shares to the two maidens, the son shall take all the residue.

124. Thus this should be held to apply in respect of brothers and sisters of equal or unequal number but of the same caste. But if there be a son by a Bráhmiṇí wife, and a maiden daughter by a Kshatriyá woman, in that case having divided the paternal wealth into seven shares, having again divided the three shares of the son by the Kshatriyá woman into four and having given a fourth share to the maiden daughter by the Kshatriyá woman, the son by the Bráhmiṇí shall take all the rest. But if there be two sons by a Bráhmiṇí and one daughter by a Kshatriyá woman, then, having divided the paternal wealth into eleven shares, having again divided the three shares of the son by the Kshatriyá woman into four and having given one of these four shares to the maiden daughter of the Kshatriyá woman, the two sons by the Bráhmiṇí shall take all the residue.

125. Thus all this should be inferred in respect of brothers and sisters of different classes and of equal or unequal number.

126. But the commentary that the text: 'Having given a fourth share' means that so much money should be given as is necessary for the sacrament alone is not reasonable, a fourth share being specified; for it conflicts with the text: "But let the brothers give from their own shares separately to the maiden daughters a fourth part of their respective shares. Those who refuse to give shall become degraded."(1)

127. The meaning of this is, that brothers of the Bráhmin caste, etc., shall give to the sisters of the Bráhmin caste, etc., out of their own respective shares a fourth part of the share to which brothers of their respective classes are entitled, under the subsequent text: "The son by a Bráhmiṇí shall take four shares, etc."(2) It is not said that a fourth part should be taken out of his own share and given to the sister, but out of the share due to a brother of the same class. That a fourth share should be given to every maiden daughter separately in case of difference of caste and inequality of number, is a rule of division already stated.

128. The necessity of giving the fourth share is inferred from the declaration of evil consequences in case of refusal stated in 'Those who refuse to give shall become degraded.'

129. Nor can it be said that even here the giving of a fourth share is not contemplated, but only the giving of so much wealth as may be necessary for the sacrament; since there is no warrant for saying that the giving of a fourth share is not contemplated in the two Smriti texts and since the texts declare it a sin to refuse to give.

130. As for the objection stated by some that if the giving

(1) Manu, ix. 118 (2) Yájñavalkya, ii. 125,

of a fourth share be specifically enjoined, then the sister having many brothers would become immensely rich and that a brother having many sisters would have no wealth, that certainly has been refuted by the mode of division already stated; for the giving of a fourth part taken from his own share is not here stated, when alone it may so happen. Therefore, even the maiden daughter takes a share after the father's death; before his death whatever the father gives that alone she takes; for there is no special text.

131. All this is certainly the view of Asaháya, Medhátithi, Vijñánayogi, the author of the Pradipika and others.

132. Bháruchi, Aparárka and others do not respect that view.

133. 'After the father'] when the father is alive, the daughter takes no share. While the father is alive, something should be given by the father at his pleasure to the daughters. When the father is dead, some wealth should be given by the brothers also to the unmarried daughters to be used for the sacrament and to the unendowed for their well-being. But they do not take a fourth share. As for the texts which enjoin the giving of a fourth share, they contemplate the giving of wealth sufficient for the sacrament and wealth sufficient for their well-being. From the text of Vishṇu: "A portion should be given to the unmarried and the unendowed daughters alone," it is inferred that a share should be given only to such of the sisters as are unmarried or unendowed. It is also inferred that such portion is for the purpose of their sacrament or well-being. As for the declaration of sin in 'those who refuse to give, shall become degraded,' it should be understood that the sin is incurred by not giving the wealth necessary for their well-being or sacrament and not by not seeing them endowed or by not performing their sacrament. If the father be alive, something should be given to the daughter; similarly, if the father is dead. Where visible results are established, it is illogical to postulate invisible results, as these Smritis have their origin in logic. This is the view of Bháruchi, Aparárka, Yájñapatiya and others. Therefore alone is it said by Brihat Vishṇu: "Let him perform the sacrament of the unmarried daughters according to his means".(1)

134. Here Sankha states a special rule: "When wealth is partitioned, the maiden daughter takes her ornaments, the nuptial gifts and the stridhana."(2) Her ornaments] ornaments worn by her. Stridhana] mother's wealth.

135. Here Baudháyana says: "The daughter shall take the ornaments of their mother and what has descended from the mother's line, as also anything else."(3) Sámpradayika] descended from the line of the mother. Anything else] given by the brothers at their pleasure. The maiden daughter shall take these.

136. Yájñavalkya states an exception to this rule:—'The

(1) Vishṇu, xv. 31. (2) II. Cole. Dig., 299, cxxix.
(3) Baudhayána, ii. 2, 3, 43.

daughters shall take what had descended from the mother's line' in the text: "The daughters shall take the wealth of the mother after deducting debts; and in their default, their issue."(1) The daughters shall divide the wealth of their mother left after deducting the debts contracted by her.

137. This will be explained. The debt contracted by the mother should be discharged by the sons alone and not the daughters, and the daughters shall take the residue of the wealth left after payment of the debts.

138. This is, indeed, reasonable. According to the text: 'Where there is more of the semen virile in the fœtus it becomes a male' &c., stridhana goes to the daughters, because of the excess of the particles of the mother's body in the daughters, and the father's wealth goes to the sons because of the excess of the particles of the father's body in the sons.

139. Here a special rule is pointed out by Gautama: "Stridhana goes to the daughters unmarried and unendowed."(2)

140. The meaning of this is:—'Where there are both married and unmarried daughters, the stridhana goes to the unmarried daughters alone. Where among the married there are both endowed and unendowed daughters, it goes to the unendowed daughters alone.' Apratta] unmarried. Apratishthita] destitute of wealth.

141. On the question who takes the residue of the mother's wealth after payment of her debts in default of daughters, he says:—'In their default, the issue.' In default of daughters, the issue, *i.e.* son, etc., shall take it. Vijñánayogi says that this is already established by the text: 'After the father's death, let them divide, etc.,' and is stated for greater perspicuity.

142. This text 'the residue of the mother's wealth, etc.,' is differently construed by Bháruchi and others thus:—In default of sons, the daughters shall divide the mother's wealth. In default of them, his line, *i.e.* paternal uncle, etc., shall take, according to the Smriti: 'Afterwards the heirs shall take it.' Afterwards means 'in default of the daughter, etc., of the owner of the wealth.' Heirs] the daughter, the paternal uncle, etc., of the owner of the wealth.

143. Therefore also is it said by Sangrahakára:—"By the word '*daya*' is denoted the wealth descended through the father and that which is descended through the mother. Partition of that is now explained."

144. As the wealth descended through the mother is denoted by the term *daya*, the sons alone are worthy to share it and not women, from the Sruti:—'Therefore women and persons deficient in organs are not sharers,' and also from the text of Gautama: "Women have no right to share, being weak."(3)

(1) Yájñavalkya, ii. 117. (2) Gautama, xxviii. 24. (3) Not found.

145. These show that where there are brothers, whatever is given as the ornaments of the mother, etc., to the daughters at the pleasure of the brothers, that alone should be taken by them and nothing else.

146. Here Hárita states a special rule :—"Manu has said that maiden daughters who are deaf or dumb, or blind from birth, or have more or less than the usual limbs should have their sacraments performed by the brothers out of the paternal wealth."(1) Anedamukáh] incompetent to speak or hear. Vikalangáh] having more or less than the usual limbs. From the use of the indefinite expression 'out of the paternal wealth,' the meaning of the text is, that their sacraments should be performed by the brothers, be it by giving the whole wealth to the bridegroom.

147. Some say that there is no sacrament for those who are suffering from such defects as deafness, dumbness, etc. It should be known that that view stands refuted.

Persons excluded from partition.

148. Manu also names those who are not entitled to share: "The impotent and the outcast, similarly, those who are congenitally blind and deaf, also the insane, the idiot and the dumb as also those who are deficient in any organ have no share."(2)

149. The meaning of this is : Anamsau klibapatitau] ; from the use of the dual number (it follows) that they should be supported by brothers who are entitled to share, or by those who take the wealth or by those who take the wives of these.

Játyandhabadhirau]. From this coupling together,(a) it follows that they have shares, but that they should, though having shares, be supported as they could marry. From the use of the word 'tadha' (similarly), the secret meaning is that the lame, &c., if capable of the sacrament of marriage take shares, and should be maintained. Unmaththajadamûkâscha]. From this grouping together, it follows that they also should be maintained and do not take shares, it must be understood, if they are worthy of marriage. 'Those who are deficient in an organ' includes women also. Those who are deficient in any organ, women such as step-mother, daughter, sister, &c., and men such as brother, his son, paternal uncle, &c., maternal uncle, &c., should be maintained.

150. Some, however, say that 'Nirindriyâh' means those whose organs such as the nose have been destroyed by disease.

151. As for what is stated by Nárada : "One who hates his father, the out cast, the impotent, as also one who has been ex-communicated, do not take shares, even if they are legitimate sons. How could they if they be kshetrajas ?"(3) Avápátitah] guilty of heinous

(1) Not found. (2) Manu, ix. 201.

(3) Nárada, xiii. 21.

(a) The word in the original is 'dvitrená' and it may mean either 'because of the dual number' or 'because of the coupling together.'

offences and excommunicated by relatives. 'Patita' and 'Shanda' are clearly understood. Those who hate their father] those who say 'this is not my father, &c.' For otherwise when the son hates his father because of the latter's partiality, a share is ordainedfor him.

152. Vasishṭha also says:—"But those who have entered another order have no shares."(1) It must be understood to mean 'other than the householder's order.'

153. Therefore alone Devala says:—"When the father is dead, the impotent, the leper, the insane, the idiot, the blind, the outcast, the issue of the outcast, and the ascetic, do not take shares."(2) The meaning is, that when the father is dead, the impotent, &c., do not become heirs. Lingi]. One who practises a vow of asceticism and also a Kshapanaka, a Pásupata, &c. The issue of the outcast] the issue begotten by him during the state of degradation; for the sin of the father's degradation does not attach to the son born before it. It will be subsequently pointed out that the relationship of father and son is temporal and ceases in case of degradation, &c.

154. So also Vishṇu says:—"The legitimate sons of those alone are sharers, but not (the sons) of the outcast begotten after the deed which worked the loss of caste; nor those who are begotten on women of the Pratiloma class; their sons also do not share even in the paternal grandfather's wealth."(3) When the father is dead]; the word *even* should then be supplied and the text commented on thus: though the father be dead or alive, the impotent, &c., are not sharers.

155. So Ápastamba also says:—"Let him, living, divide his wealth equally among his sons excluding the impotent, the insane and the outcast."(4) Parihápya] excluding. The word *cha* includes by analogy those who are not fit to marry.

156. The author of the Chandriká, however, says: "The expression 'when the father is dead' is used to indicate the period of partition." By that it should be considered that those who have impotence, &c., at the time of partition are also not sharers, nor those alone who have impotence, deafness, &c.

157. As for what is stated by Yájñavalkya: "The legitimate and the kshetraja sons of these are, if free from defect, sharers."(5) That should be regarded as applicable to Dvapara Yuga, &c., as kshetraja sons are condemned in the Kaliyuga.

158. Thus to conclude: the sons of those who are excluded from shares take the wealth of their paternal grandfather in the absence of such disease as is an impediment to their so taking; according to the text of Devala, 'their sons shall take their fathers' shares, if free from defect.' Defect] impotence, &c.

159. Here Yájñavalkya says: "The impotent, next the outcast, his son, the lame, the insane, the idiot, the blind, those who

(1) Vasishṭha, xvii; 52.
(2) II. Cole. Dig., 426, ccexxi.
(3) Vishṇu, xv. 34—38.
(4) Apastamba, ii. 6, 14, 1.
(5) Yájñavalkya, ii. 141.

are suffering from incurable disease, &c., should be maintained, they having no shares."(1) His son] the son born of the outcast. The term *adya* (&c.) is used to include those who are deficient in an organ, &c. Maintenance to be lifelong. According to the text of Manu "they should be maintained for their lives."(2)

Shares of brothers of different castes.

160. Regarding partition among brothers of different classes, Yájñavalkya states a special rule:—"The sons of a Bráhmin take four, three, two and one shares according to the order of castes of their mothers. The sons of a Kshatriyá three, two and one shares; the sons of a Vaisyá two and one shares."(3)

161. A Bráhmin may have four wives, a Kshatriyá three, a Vaisyá two, and a Súdrá a Súdrá alone. Three] according to the order of castes as shown.

162. The word *varna* denotes the three castes following the Bráhmin caste. The *san* suffix is used in the sense of 'repetition.' Thus sons begotten by a Bráhmin on women of different castes take in the order of the castes, four, three, two, and one shares, respectively.

163. This will be explained. Sons begotten by a Bráhmin on a Bráhminí obtain, each, four shares. Sons begotten by him but on a Kshatriyá woman, take each three shares; begotten on a Vaisyá woman, each two shares; on a Súdrá woman, each one share.

164. Kshatriyá] born of a Kshatriyá. 'In every caste' is read here also. Take three, two, and one shares in their order. Those begotten by a Kshatriyá on a Kshatriyá woman take each three shares.

165. On a Vaisyá woman each two shares; and on a Súdrá woman a share each. Vitjáh] sons of a Vaisyá take two and one shares in the order of caste. Those begotten by a Vaisyá on a Vaisyá woman take each two shares.

166. On a Súdrá woman, a share each. As the Súdrá can only have one wife, the rule of equal partition, previously stated, alone applies to his sons, for there can be no brothers dissimilar in class.

167. This, however, has been stated by Yájñavalkya in accordance with other Smritis, for in his view a Bráhmin is prohibited from marrying a Súdrá woman. This is stated by himself: "That is not my view, for he is born again of her."(4) *That* refers to the marriage of a Súdrá woman by a Bráhmin.

Partible and impartible wealth.

168. Kátyáyana states what wealth is partible. "The wealth of the grandfather, the wealth of the father and anything else acquired by themselves, all this is divided at the partition of co-heirs."(5)

(1) Yájñavalkya, ii. 140.
(2) Manu, ix. 202.
(3) Yájñavalkya, ii. 125.
(4) *Ibid*, i. 56.
(5) II. Cole. Dig., 478, ccclxviii.

Acquired by themselves], acquired by themselves with the aid of the undivided wealth of the father; for property otherwise self-acquired is impartible.

169. Thus says Yájñavalkya: "Whatever else is acquired by himself without detriment to the paternal wealth, presents from friends and nuptial gifts do not belong to the co-heirs. Whoever recovers property descended in regular succession and lost, need not give it to the co-heirs, as also what is gained by learning."(1)

170. Whatever is acquired by himself without loss to the wealth of the mother or of the father, what is obtained from a friend, and what is obtained by marriage, do not belong to the heirs, *i.e.* the brothers and the rest. Whatever has descended in regular succession from the father to the son, but which was taken away by others, and not recovered by the father and the rest from inability, etc., he among the sons who recovers it shall not give to the brothers. The recoverer alone shall take it.

171. There it has been stated by Vijyánayogi, that he among the sons who recovers it with the permission of the rest need not give it to the co-heirs. That Apararka will not allow; for their right to share in it being lost by the very fact of their consent, this text would become superfluous.

172. Sankha says that in land he takes a fourth share: "If one recover land descended in regular succession but lost by his predecessors, the others take their own share in it, having given him a fourth part."(2) After the word 'kramát' the word 'abhyágatam' (descended) should be supplied.

173. The meaning of 'what else is acquired by himself' has been elucidated by Manu thus: "What is acquired by one with effort without injuring the paternal wealth."(3) 'With effort' means 'by agriculture, etc., requiring exertion.' The word 'paternal' in 'paternal wealth' includes by analogy all common wealth. Anupaghnan] without injuring.

174. Vyása also says:—"What wealth one obtains by his own ability without depending on the paternal wealth, he need not give to his co-heirs."(4)

175. Prajápati also says:—"Wealth obtained by learning, valour and exertion, the wealth of the wife, wealth received with the gift of honey, etc., at marriage, friendly presents and nuptial gifts are not partitioned among the brothers." Even what is obtained by learning, *i.e.* by reciting the Vedas, by teaching the Vedas, or by explaining the meaning of the Vedas, need not be given to the co-heirs. The acquirer alone shall take it.

176. It has been already explained at length by Bharuchi that in similar circumstances the wealth, though in the possession

(1) Yájñavalkya, ii. 118 and 119.
(2) II. Cole. Dig., 464, cccliv.
(3) Manu, ix. 208.
(4) II. Cole. Dig., 451, cccliv.

of one, has really the nature of wealth assigned to one on partition.

177. Kátyáyana gives the description of the gains of learning: "What is obtained by one, as money staked, by display of learning should be known as *wealth acquired by learning* and is not included in a partition. What is obtained from a disciple, by officiating as a *ritwik*, by answering queries, by solving doubtful questions, by display of knowledge, by controversy and by superior recitation of the Vedas, is said to be *wealth acquired by learning* and is not included in a partition. Brihaspati says that what is obtained as money staked, by defeating the enemy by learning, should be known as wealth acquired by learning and impartible. Bhrigu says that what is acquired by a pledged vow regarding learning, what is obtained from a disciple and what is obtained by officiating as a *ritwik*, is *wealth acquired by learning*."(1)

The word 'Prádhyáyana' means "composing a hundred verses in twenty-four minutes," etc., or studying the Vedas after feeding Bráhmins.

178. Here 'whatever else is acquired by himself without detriment to the father's wealth' applies alike to all clauses. Therefore it is connected with every clause thus: Whatever friendly presents are acquired without detriment to the father's property, whatever nuptial gifts, etc., without detriment to the father's wealth, whatever property descended in regular succession.....without detriment to the father's property, and whatever is acquired by learning without detriment to the father's wealth.

179. Accordingly, friendly presents obtained by recompense detrimental to the father's wealth, what is obtained by marriage in the Ásura and other forms detrimental to the father's wealth, what is descended in succession and recovered at the expense of the paternal wealth and, similarly, what is obtained by learning acquired at the expense of the paternal wealth, all that should be divided by all the brothers.

180. Accordingly, as the expression 'without detriment to the father's wealth' applies to all acquisitions, even that obtained by acceptance of gifts to the detriment of the paternal wealth should be divided.

181. If this expression does not apply to all, friendly gifts, nuptial gifts, etc., should not have been mentioned.

182. Here it is said that the mention of friendly gifts, etc., serves the purpose of asserting the impartibility of friendly presents, etc., obtained even to the prejudice of the paternal wealth.

183. Were it so, it conflicts with established practice and with the text of Nárada regarding wealth acquired by learning. "One who maintains the family of his brother engaged in the

(1) II. Cole. Dig., 444. cccxlvii.

acquisition of learning, takes a share in the wealth acquired by such learning, though unlearned himself."(1)

184. If 'without detriment to the father's wealth' were a distinct clause in itself, property obtained by acceptance of gift will become impartible, contrary to established practice. This is also elucidated by Manu by the text already quoted, 'without injuring the paternal estate, etc.'

185. Kátyáyana gives the character of impartibility to wealth acquired by learning: "Wealth obtained by learning, acquired from a stranger with the aid of a foreign maintenance, is *wealth acquired by learning.*"(2) The word '*para*' here is intended to denote maintenance other than that coming out of the undivided wealth. The word *bhakta* is used to denote only wealth.

186. It should, therefore, be considered that the application of the expression 'without detriment to the father's property' to all acquisitions is logical.

187. It may be objected that wealth obtained from affectionate gifts without detriment to the father's property need not be stated to be impartible, since there can be no supposition of a partition of that; for it is well known that what is acquired by one is his own property and not any other's, and a denial presupposes the possibility of what is denied.

188. We answer: this is a denial of such possibility arising from the text: "In what is acquired by persons living together all of them take equal shares."(3)

189. Here Háritá says: "Let them not divide *yoga, kshema* and roads."(4) *Yoga* is the obtaining of what has not been obtained. *Kshema* is the guarding of what has been obtained.

190. Laugákshi explains the meaning of the words *Yoga* and *Kshema*. "Those who know the truth say that *kshema* denotes conservatory acts and *yoga* sacrificial acts. Both of them have been declared impartible as also the bed and seat."

191. Therefore the meaning is this: By the term *yoga* are indicated all sacrificial acts accomplished with the aid of the smarta and the srouta fires and productive of what has not been obtained. By the term *kshema* are indicated all conservatory acts such as the construction of tanks, laying out of gardens, etc., which serve as an aid to the protection of what has been obtained. Both these, though paternal, and though acquired at the expense of the paternal wealth, are impartible.

192. Some, however, say that those who perform *Yogakshema*, the king, the minister, the purohit, etc., are meant. Others yet (say) that umbrella, cowtails, weapons, carriages, etc., are meant.

193. 'Prachára' is the way for egress from and ingress to the house, the garden, etc. That also is impartible.

(1) Nárada, xiii. 10.
(2) II. Cole. Dig., 444, cccxlvii (i).
(3) Brihaspati, xxv. 14.
(4) Not found.

194. Nárada, however, states a special rule: "Even to that wealth which is given by the mother out of affection being her property this rule applies; even the mother has power like the father."(1) 'In respect of her wealth' should be supplied. This rule, *i.e.* the rule of impartibility stated in respect of the gift by the father.

195. As for the impartibility of land declared by Usanas: "Implements of sacrifice, land, and documents and boiled rice, water and women are impartible among persons of the same gotra, though in the thousandth degree."(2) That applies to the son of a Kshatriyá woman begotten by a Bráhmin, according to the Smriti text: "Land acquired by acceptance of gift should not be given to the son by a Kshatriyá and other (inferior) women; even should the father give it the son by the Bráhminí wife may resume it when he is dead."(3) This is the commentary of Vijñanesvara, Asaháya and Medhátithi.

196. According to Bháruchi, Aparárka, the author of the Chandriká, etc, however, what is gained by officiating at a sacrifice is partible; and land also is partible with the consent of all the heirs, according to the text of Prajápati: "Whatever is done regarding immoveable property without the consent of all the heirs should be regarded as not done, if even one does not consent," and according to the text: "In respect of immoveable property, etc., descended from ancestors no one has power even in the matter of partition, but it should only be enjoyed, and there is neither gift nor sale of it."(12) Loke] in immoveable property, etc., descended from ancestors. No one] not even the father, etc. From the word *api* (even) in 'even in the matter of partition' it follows that he has no power even in the matter of sale, etc. They have explained this text to mean that no one should make a partition, sale or gift of it without the concurrence of the heirs.

197. So Manu says:—"Cloths, documents, ornaments, prepared food, water, women, sacrificial and conservatory acts, and the common way, are declared to be impartible."(4)

198. The impartibility is only in respect of cloths used and not others. Sankha and Likhita say:—"But there is no partition of cloths which have been worn."(5)

199. But cloths worn by the father should, by those dividing the wealth after the father's death, be given to the person who feeds at the father's sráddha, as Brihaspati says: "The cloths, ornaments, bed, the carriage, etc., of the father, should be adorned with perfumes and flowers and given to the person feeding at the sráddha."(6)

200. But where there are many conveyances such as horses, etc., they are partible among heirs by the sale of them.

201. Even of ornaments, that which has been worn by any one belongs to him alone, and that which has not been worn, being

(1) Nárada, xiii. 7.
(2) Not found.
(3) Brihaspati, xxv. 30.
(4) Manu, ix. 219.
(5) Not found in Cole. Dig.
(6) Brihaspati, xxv. 85.

common, is certainly partible, according to the Smriti: "Whatever ornaments have been worn by the wives during the lifetime of the husband, the heirs shall not take them. Taking, they shall be degraded."(1)

202. Here, from the use of the word 'worn', the partibility of those not worn is inferred.

203. Prepared food] rice-cake, etc. The expression 'tandulamôdakâdi', means 'sweet cakes made of rice.'

204. It is so stated by Manu: "Rice and cloths, ornaments and carriage, reservoir of water and also women are not partible, though their number be capable of equal division."(2) *Water, i.e.*, source of water, *i.e.*, well, etc. That too, should not be divided by its money value, etc., but should be enjoyed by turns. Also women] slaves unequal should not be divided according to money value, but should be made to do duty by turns.

Partition of sons of deceased undivided fathers.

205. Here the distinction in case of partition, by grandsons, of the paternal grandfather's property will be shown.

206. Yájñavalkya says:—"But to sons of deceased fathers, the allotment of shares is by the fathers."(3) The allotment of shares to the sons of undivided deceased fathers is by the fathers. This will be explained.

207. Where undivided brothers have left for heaven having left male issue, unequal in number, one two sons, another three, and a third four, then the two take the one share of their father, the other three also, the one share of their father and the four also, the one share of their father alone.

208. On this subject alone Kátyáyana says:—"That share alone will go to all the brothers according to law." (4) That share alone] their father's share alone.

209. Though unequal ownership may result from thus allotting the shares of the father to the several sons, still it should be followed, being expressly stated.

210. Just in the same way where, among undivided brothers having male issue, one dies, his son shall divide the wealth with his paternal uncles, according to the text of Kátyáyana: "When an undivided younger brother dies, let his son be made the sharer of wealth."(5)

211. So Vishṇu also says:—"Where one is dead or two, where one is alive or two, their sons equal or unequal in number, even the allotment of shares is by the fathers."(6)

212. Even Vijñánesvara says that even here the rule expressly laid down is, that the sons of those who are dead take only their fathers' shares.

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(1) Manu, ix. 200.
(2) Not found.
(3) Yájñavalkya, ii. 120.
(4) II. Cole. Dig., 241, lxxix.
(5) Do.
(6) Vishṇu, xvii. 23.

213. But Aparárka, Bháruchi and others say:—"As the sons of deceased fathers acquire an ownership in the wealth descended through the father, capable of being disposed of at their pleasure, the partition is certainly of the father's ownership. Therefore that the allotment of shares is according to the fathers is only a declaration of a law already established by sound reasoning. Therefore alone Kátyáyana says 'that share alone belongs to all the brothers, etc'."

Equal ownership of father and son in the paternal grandfather's wealth.

214. Here Yájñavalkya states a distinction: "In land acquired by the paternal grandfather, in corrody, and in chattels, the ownership of father and son is equal."(1) Land] rice-field, etc. Nibhandha] Allowance granted by the king, minister or other personage in the form that a fixed quantity of every article sold in every shop should be given to a particular individual by the month or by the day.

Dravya] gold, silver, etc., clearly. In what has been obtained by the paternal grandfather by acceptance of gift, purchase, etc., the ownership of the father and the son is equal. *Hi*] because, *i.e.*, being well known to the world.

215. Therefore, partition is not by the father's choice alone. Nor has the father two shares.

216. Therefore also it should be understood that the text: "If the father should make a partition, he may at his pleasure divide the sons, etc.,"(2) applies to self-acquired property.

217. Similarly, the text: "Let the father making a partition take two shares for himself" (3) also applies to self-acquired property.

218. The dependence declared by the text: "While they are living, the son is not independent, etc.,"(4) refers to property acquired by the mother and the father.

219. So also the text: "They are powerless while their parents live."(5)

220. So also the text: "While the mother has not ceased to menstruate." It should be known that partition of the grandfather's wealth takes place at the choice of the sons alone, though the father have desires and be unwilling to make a partition.

221. Accordingly, when the paternal grandfather's wealth is given or sold away by the undivided father, the son, the grandson and the great-grandson have the power of interdiction; but in respect of property acquired by the father himself, they have no power of interdiction, being dependent on him.

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(1) Yájñavalkya, ii 121.
(2) *Ibid*, ii. 114.
(3) Nárada, xiii. 12.
(4) II. Cole. Dig., 199, viii.
(5) Manu, ix. 104.

222. But they should acquiesce; though ownership in the father's and paternal grandfather's wealth is by birth alone, still, in respect of the father's wealth, the son should acquiesce in the father's alienation of his self-acquired wealth, as he is dependent on the father and as the father being the acquirer has a predominant interest. This is also known from the Smriti: "There is no gift or sale without convening all the sons."(1) But regarding the paternal grandfather's wealth, there being no distinction in the ownership of both, the right of prohibition also exists. This is the difference.

223. Therefore alone has it been said by Manu: "Whatever wealth of his father left unrecovered the father recovers, he need not divide with his sons, if unwilling, because it is self-acquired."(2)

224. The meaning of this is:—'It should be known that the author shows that the father should divide with his sons at their pleasure, though unwilling, the wealth acquired by the paternal grandfather by stating that he need not divide, if unwilling, with his sons, that property of the paternal grandfather taken away by another and not recovered by the paternal grandfather but recovered by himself, just as he need not divide his own self-acquired property.

225. Therefore alone Brihaspati says: "In the wealth acquired by the paternal grandfather, moveable or immoveable, the right of the father and the son to equal shares has been declared."(3)

226. Vyása also says: "In house and land descended from ancestors, the son and the grandson take equal shares."(4)

The right of the son born after partition.

227. Yájñavalkya states the allotment of share to the son born after partition: "The son begotten by a divided father on a woman of equal class takes a share."(5)

228. The meaning is that the son born of a wife equal in class, after partition of the sons, takes a share. Vibhága] what is divided. Share] the share of the parents. As he takes it, he is called *vibhágabhák*.

The meaning is that after his parents he takes their share.

229. But a son born of a woman unequal in caste takes only his own share of the paternal wealth.

230. Vijñánesa says: "But he takes the whole of his mother's."

231. Aparárka and others say that he takes the whole of even both, the word 'Pitryam' (paternal) in the text: 'But the son born after partition takes only the paternal wealth' being construed to mean generally what belongs to the mother and the father. Accordingly the Smriti says: "The son born before parti-

(1) I. Cole., Dig., 411, xiv.
(2) Manu, ix. 209.
(3) Brihaspati, xxv. 3.
(4) II. Cole. Dig., 258, xciv.
(5) Yájñavalkya, ii. 122.

tion has no right in the shares of the parents and the son born after partition in the share of the brother."(1) The son born before partition has no ownership in the shares of the father and the mother, and the son born after partition in the share of his brother. This is the meaning of the text.

232. Accordingly, all that is acquired by the father subsequent to partition belongs only to the son born after partition.

233. Accordingly, Vishṇu says: "Whatever is acquired by the father separated from his sons, all that belongs to the son born after partition. Those born before partition are declared to have no right."(2)

234. The son born after partition shall divide with such of the brothers as lived in re-union with the father after partition, as Manu says:—"Let him divide with those who were re-united with him (*i.e.*, the father)."(3)

235. Where a father has two or three or many sons and is divided with some and undivided with others, property acquired by him shall be divided after his death only among his undivided sons.

236. But if the father had subsequently divided with these sons, his wealth shall be divided only among his sons with whom he had previously or subsequently divided. It does not go to his wife. It will be later on pointed out that the order of succession laid down in "the wife, the daughters, etc.,"(4) applies not to the father but to the brother, etc.

237. Yájñavalkya states how the share should be allotted to one born after partition, where the pregnancy of the brother's wife or of the mother was not manifest during the time of partition: "or his share shall be allotted out of the visible wealth corrected for income and expenditure."

238. This will be explained. Having added to every share the income accrued therefrom and having subtracted from the sum the father's debt, something should be taken from the residue of every share and given to the son born after partition so that he may have an equal share. Vijñánesa says that 'his share' means 'the share of the son born, after partition among the brothers, of the mother whose pregnancy was not manifest when the father died.'

239. Vasishṭha says that where the pregnancy is manifest, partition should be made after awaiting delivery: "Next partition among brothers to be delayed till childless wives beget sons."(5) This should be construed to mean, 'they should wait till the confinement of pregnant wives.' As the rest has already been explained, it is not separately stated here.

(1) Brihaspati, xxv. 18.
(2) Not found in Vishṇu.
(3) Manu, ix. 216.
(4) Yájñavalkya, ii. 135.
(5) Vasishṭha, xvii. 41.

240. The same rule, Brihaspati says, applies alike to heirs returning from a distant country. "He who returns from a distant country to which he had gone for earning wealth, leaving his own country and relatives, should certainly be given his share."(1) Leaving his own country, etc.] leaving the country where all his relatives reside.

241. The same author says that share should be given to him even where partition had been made in ignorance of his existence from his long residence abroad: "He who returns even after long residence abroad shares in the debts, wealth secured by documents house and land belonging to his paternal grandfather."(2) 'Share' means 'is entitled to partition of wealth.' Returned] subsequent to partition.

242. The same author states a special rule in respect of the grandson, etc:—"Whether the third, or the fifth or even the seventh in descent, he obtains a share in property descended from his ancestors, where his lineage and his name are ascertained."(3) The meaning is that he takes a share only in the wealth descended from his ancestors.

243. Some here say that the share is only of land descended from the ancestors and not of any other property. So Vishṇu says: "Land should be given up by kinsmen to one who has returned, where worthy neighbours know him to be of the (owner's) lineage."(4) Others say that the mention of land is illustrative of all the wealth descended from the ancestors.

244. Brihat Vishṇu states a distinction here:—"The right of a person, returned either after or before partition and attempting to get his share, should be recognised when he proves his ownership in the wealth in the possession of others by evidence visible and invisible; and not otherwise."(5) The meaning is clear.

245. The son born after partition takes all the wealth of the father and the mother.

246. No objection should be made by the son born after partition to the gift from affection of ornaments, etc., if given by the father or the mother to the son separated from them by partition, nor could a gift so made be resumed.

247. Thus says Vishṇu:—"What has been given by the mother and the father is the wealth of him alone to whom it was given."(6) The son born after partition has no right to it. The meaning is: that it does not become the property of the son born after partition.

248. From the statement of the rule that what is given by the father belongs to him to whom it is given, it is established that whatever was so given before partition belongs only to him to whom it was given.

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(1) Brihaspati, xxv. 24.
(2) *Ibid*, xxv. 23.
(3) *Ibid*, xxv. 25.
(4) Not found in Vishṇu but found in Brihaspati (xxv. 26).
(5) Not found in Cole. Dig.
(6) Not found,

Description of stridhana and its partition.

249. Now, partition of stridhana.

250. There Vishṇu says:—"Woman shall enjoy her Saudáyika according to her pleasure."(1) Saudáyika includes what was given by the husband.

251. Accordingly, Vyása also says: "Whatever wealth also was given by the husband, she may enjoy according to her pleasure."(2)

252. Saudáyika is thus defined: "Whatever is received by a woman, married or unmarried, either in her husband's or in her father's house, from the husband, or from the parent is declared to be Saudáyika."(3) After 'labdham' (obtained) the word 'dhanam' (wealth) should be supplied.

253. Accordingly Vyása also says: "The wealth obtained by a maiden at or after her marriage, from the house of the parents or of the husband, is declared to be Saudáyika."(4)

254. The *taddhita* suffix in the word *Saudáyika* does not add to the denotation of the word Sudáya. Sudáya is Saudáyika. The *tak* suffix is, from the rule of grammar, applicable to the word *vinaya*, &c.

255. If it be urged that the *taddhita* suffix not adding to the meaning of the word, it means *dáya* and that as women are not worthy of *dáya*, it is inconsistent, we say not so; for women are entitled to their husband's wealth.

256. The word *Saudáyika* is always of the neuter gender, because of the rule 'that suffixes, denoting the meaning of the primitive word to which they are added, assume a different gender and number from those of the primitive word.'

257. Accordingly Nárada also says: "Whatever was given to the wife by the husband, being pleased, she may enjoy it even though he be dead, according to her pleasure or give it away, barring immoveable property."(5)

258. From the use of the expression 'according to her pleasure', her independent power is stated. It should therefore be held that women have independent power in respect of all Saudáyika (affectionate gift) except immoveable property.

259. But the husbands have certainly no independent power at all in respect of the wife's property, as Kátyáyana says: "Not the husband, not certainly the son, not the father, not the brothers, have power in the taking or giving away of stridhana;"(6) 'because from want of ownership' is implied.

260. And stridhana is *Adhyágnikam*, etc. So says Manu: "Stridhana is declared to be of six sorts:—That given before the

(1) Not found.
(2) II Cole. Dig., 600, ccccIxxxi.
(3) *Ibid*, 594, ccccIxxv.
(4) Not found.
(5) II. Cole. Dig., 595, ccccIxxvi.
(6) *Ibid*, 594, ccccIxxv.

nuptial fire, that given at the time of going to the husband's house, that given out of affection and those received from the husband, from the mother and from the father."(1)

261. Here what is given before the fire at the time of marriage by the maternal uncle, etc., is said to be *given before the nuptial fire.*

262. Accordingly Kátyáyana also says: "Whatever is given to a woman before the fire at the time of marriage has been declared by good men to be stridhana *given before the nuptial fire;* and that which is given to a woman at the time of being taken from her father's house to her husband's has been declared to be stridhana named *Adhyáváhanika.* That which is given by the mother-in-law or by the father out of affection and that which is given as a reward for prostrating herself before the elders at their feet is called *Prítidatta.*"(2) Pádavandanikam] given at the time of her prostrating before them at their feet.

263. "Given by the brother, mother or father at any time for her livelihood" should be supplied. The word 'sixfold' is used for the purpose of showing that they are no fewer than six, not that there are not more.

264. Therefore alone Yájñavalkya says: "What is given by the father, mother, husband, and brother, what is received before the nuptial fire, what is received at the time of supersession, etc., is declared to be stridhana."(3) Ádhivédanikam] given on account of supersession, according to the Smriti: 'To the superseded wife let him give, etc.' The word *adya* (etc.) contemplates wealth obtained by inheritance, purchase, partition, acceptance of a gift, etc.

265. The same author mentions even other kinds of stridhana. "What is given by kinsmen, *sulka* likewise, and also *anvadheya.*"(4) By kinsmen] By the relatives of the maiden on the mother's side and those on the father's side.

266. Vijñánesa says that '*sulka*' means 'that in consideration of which a maiden is given.'

267. The author of the Chandriká, however, says: "Whatever is received as the price of household utensils, carriages, milch cattle, jewels, and labour is declared to be *sulka.*" *The price of household utensils,* etc., received by the wife from the husband, as a condition of the gift of a maiden.

268. *Anvádheyaka* is what is given at or after the marriage.

269. It is also said by Kátyáyana: "What is received by a woman after the marriage from the family of her husband as also wealth obtained from the family of her father."(5) 'Has been declared to be stridhana,' is the expression which connects it with what precedes.

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(1) Manu, ix. 194.
(2) II. Cole. Dig., 585, 586, cccclxiv—vi.
(3) Yájñavalkya, ii. 143.
(4) *Ibid,* ii. 144.
(5) II. Cole. Dig., 587, cccclxviii.

270. Here Bháruchi says: "Bride-price is denoted by the word *sulka*, and that obtains in the Ásura and other forms of marriage alone. But that is prohibited."

271. The opinion is, according to the text of Vishnu, that the Ársha marriage is by gift of a bull and a cow or two cows. The maiden is given in the Ársha form of marriage after taking a bull and a cow. That alone being the stridhana of the mother is not prohibited for the daughter; or be it that the taking of wealth in Ársha and other forms is prohibited.

272. Here the question whether it is prohibited or not is not relevant, but the question whether it is partible or not is. Hence there is nothing contradictory.

273. The same author states the result of the text: "Not the husband, not the son, not the father, etc." "If any one of these eats away by force the stridhana property, he shall be made to return it with interest and shall also be punished. But if he eats it away with her permission, given out of affection, he shall be made to return the principal alone if he should become rich."(1)

274. By the use of the expression 'if he should become rich' it is meant that if destitute of wealth he should not be made to return even the principal, as the return of principal is ordained even in case of his eating away with consent.

275. This will be explained. The husband has no ownership in the stridhana not alone that he has independent power, but the wife properly married has ownership in her husband's wealth, though always dependent. It should therefore be understood that the mutual rights of the husband and the wife are not the same.

276. Therefore alone Devala states the unworthiness of the husband even in the enjoyment of stridhana: "Maintenance, ornaments, *sulka*, and gains of labor are stridhana. She herself alone enjoys it and the husband is not himself entitled to use such wealth in the absence of distress. In case of waste and enjoyment he shall return it with interest to his wife."(2) Vritti] wealth given by the father, etc., for livelihood. *Sulka* has been already explained. Lábha]. What is obtained.

277. This will be explained. What is obtained by the wife for purposes of Gaurivrita, etc., is also stridhana; or 'lábha,' may mean 'interest.'

278. Stridhana, previously mentioned, is spoken of as the principal which bears interest, and that interest is denoted by the word 'lábha.'

279. Though interest belongs to the owner of the principal lent, still as women are not entitled to lend money and as their husbands alone have that power, the expression 'she herself alone is used that such doubt may not arise. The word 'alone' is used to exclude her issue.

(1) II. Cole. Dig., 594, ccccIxxv—5&6. (2) II. Cole. Dig., 597, ccccIxxviii.

280. The word *vrithá* means 'in the absence of distress'. *Mokshah*] expending.

281. By the expression 'in the absence of distress' is shown that in distress the husband alone and none other is entitled to enjoy stridhana.

282. Distress] absence of wealth necessary for the maintenance of the family.

283. Accordingly, Yájñavalkya also says: "A husband need not return to his wife her stridhana taken by him during famine, for purposes of charity, in sickness, and under duress."(1) Purposes of charity] constant and occasional; also in some optional domestic rites such as grihayajna.

284. Under duress]; the author of the Chandriká explains 'while imprisoned by creditors, etc., and unable to get out but by the giving of property'. Vijñánesvara explains, 'when he is placed in custody, or captured in war, etc., and has no other wealth.'

285. Here Manu states a special rule: "To their daughters also, when they have daughters, something should be given out of affection from the wealth of their maternal grandmother according to their merit."(2) According to their merit] with due regard to their character, usefulness and poverty. 'Their daughters' means 'the daughters of the sisters.'

286. It may be asked how something could be ordained to be given them, as the daughters of sisters have no right in the maternal grandmother's wealth while there are brothers and sisters.

287. True: There is no objection, as it has been stated (that it should be given) *out of affection*. Just as though daughters have no right to share in the father's wealth, it is believed that wealth necessary for their marriage and living should be given to them, both on account of express texts as also from the declaration of strong disapproval in the text, "those who refuse to give shall be degraded;" so it should be understood here also.

288. Vishṇu lays down a special rule: "The *yautaka* of the mother is the share of the daughters alone";(3) 'and not of the brothers,' should be supplied.

289. *Yautaka* is wealth given to the bride and the bridegroom mutually united. It is called *yautaka* because it is the wealth of the united.

290. But Gautama states a special rule: "Stridhana goes to the daughters, unmarried and destitute of wealth."(4)

291. The meaning is that Saudáyika stridhanam goes to the unmarried daughters and the daughters that are destitute of wealth. Therefore that they alone should divide such wealth in due shares is the drift.

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1) Yájñavalkya, ii. 147.
2) Manu, ix. 193.
(3) Not found in Vishnu. A similar passage occurs in Manu, ix. 131.
(4) Gautama, xxviii. 24.

292. This is the explanation of Gautama's text consistent with Aparárka's view. But the text has been already explained consistently with Vijñánesvara's view.

293. After the death of the wife her wealth, in the absence of daughters, belongs to the husband.

294. So says Yájñavalkya also: "The stridhana of a childless woman married in the four forms commencing with the Bráhma goes to the husband, and in the other four forms, to her parents: in all forms, if she has issue, to the daughters."(1)

295. The meaning of this is:—The Saudáyika wealth, above defined, of a childless woman married in Bráhma, Daiva, Ársha or Prajápatya form goes to her husband; and in default, to his nearest Sapindas. The same (wealth of a childless woman) married in the Ásura, Gándharva, Rákshasa or Paisácha form,

296. Goes to the parents. The word *pitarau* is an *ekasesha* compound of *mata* and *pita*. It goes to them.

297. The mother, though mentioned by an *ekasesha* compound, takes the wealth first, because of her greater importance; for the word *máta* is the more important word in the expansion of the *ekasesha* compound.

298. In default of them their nearest kin take the wealth.

299. In all forms of marriage, if she leaves issue, her daughters take the wealth.

300. By the word 'daughters' here daughters' daughters are denoted, the daughters themselves having been named in the text: "The daughters take the residue of the mother's wealth."(2)

301. Thus: when the mother dies, her daughters first take her wealth. If there be both married and unmarried daughters, the unmarried daughters take first. In the absence of these, the married daughters. Even if there be married daughters rich and poor, the poor take first.

302. This view of Vijñánesvara is not respected by Bháruchi, Aparárka, the author of the Chandriká and others, and because Vijñánesvara's view is supported only by his own reasoning and requires the importation of many words, and because all daughters are mentioned without distinction in the text of Gautama: "Stridhana goes to the daughters unmarried and destitute of wealth."

303. And this too barring *sulka*. For sulka goes only to the brothers of the whole blood, according to the text of Gautama: "After the mother's death, the *sulka* of the sister goes to the brothers of the whole blood"(3) The words *matuh* and *urdhvam* should be connected and construed.

304. In default of all daughters, daughters' daughters take according to the text: 'If she have issue, to the daughters, etc.'

(1) Yájñavalkya, ii. 145. (2) Yájñavalkya, ii. 117.
(3) Gautama, xxviii. 25.

305. If there be an unequal number of them by different mothers, then the allotment of shares is according to the mothers. According to the text of Gautama: "Their ownership is through their mothers."(1) Svabhâva] ownership. Pratimâtri] mother and mother. The meaning is that their shares correspond to the shares of their mothers.

306. But the strídhana of a childless wife of inferior caste, the daughter of her co-wife of superior caste, though born of a different mother, takes, and in default of her, her issue.

307. So says Manu also: "The wealth of the wife given to her by her father, the daughter by a Brahminí wife takes or (in default of her), her issue".(2)

308. Vijñânesa says that the word *Brahminí* is used illustratively to indicate superior caste. Therefore also the daughter by a Kshatriyá wife takes the wealth of a childless Vaisyá wife deceased: as daughters' sons and sons' sons have claims on the wealth of the mother.

309. So Manu also says: "But when the mother is dead, all uterine brothers and sisters shall share the mother's wealth equally."(3)

310. All uterine brothers shall share their mother's wealth equally. The uterine sisters also 'shall share equally' should be supplied. The meaning is not that the uterine brothers and sisters together shall divide equally, for that conflicts with the previous texts laying down the order of succession, the word *cha* being appropriate even by showing that they both alike are sharers, just as in the expression "Devadatta but also Yajnadatta." The word *equally* is used to prohibit deductions, and the word *uterine* to exclude those born of a different mother.

311. Therefore alone Vishṇu says: The *sulka* of the sister belongs to the mother and the uterine brothers."(4) The meaning is that strídhana of the sister, known as *sulka*, belongs to the mother alone, and in default of her to the uterine brothers alone and not to brothers by different mothers.

312. As for the text of Gautama: 'Bhaginí sulkam,' &c., the prose order is 'after the mother, to the uterine brothers.'

313. As Baudhâyana says: "Strídhana goes to the mother, and in default of her it goes to the uterine brothers."(5) Strídhana] *sulka* given to the maiden.

314. Therefore also the commentary of Asahâya, that in a partition among brothers by different mothers, something out of the bride-price should be given even to the brothers of the half-blood, is unsupported, because in all wealth designated bride-price the rights of the uterine brothers alone are declared by the texts: "But the *sulka* of the sister goes to the uterine brothers after the mother's death,"(6) &c.

(1) Gautama, xxviii. 17.
(2) Manu, ix. 198.
(3) *Ibid*, ix. 192.
(4) Not found in Vishṇu. [Gautama.
(5) Not found in Baudhâyana but found in
(6) Gautama, xxviii. 24.

315. Gautama, by some circumlocution, states that grandsons take the wealth of the paternal grandfather in the absence of the sons, on the ground that "those who are to discharge the debts take the heritable wealth and discharge the debts "(1), and as the grandsons are bound to pay the debts of the paternal grandfather according to the text: "Debts should be discharged by sons and grandsons."(2)

316. If it be urged that, as on the death of the paternal grandmother, the son alone is entitled to perform the obsequies, there would be a conflict with the text of Vishṇu: "The funeral rites are to be performed only with the common wealth by the son and the grandson," it is not so; for Bháruchi has thus determined the scope of their application. "It is only in the Shodasá sráddhas that the common wealth of the son and the grandson is necessary in order to deliver the deceased from her preta condition."

317. In the absence even of the grandsons, Yájñavalkya lays down the order of succession: "When she dies without progeny, let her relatives take it."(3)

318. This is the meaning: It] the stridhana above named. Without progeny] without issue. When a woman dies having neither daughter nor son, son's son, her relatives, *i.e.* husband and others take (her wealth).

319. As Manu says: "When a woman married in the Bráhma, Daiva, Ársha, Gándharva or Prájápatya form dies, her wealth goes to her husband alone."(4)

320. As for the text of Kátyáyana: "Whatever was given by relatives goes to the relatives, and in default of them to the husband,"(5) the text also applies to the wealth of women married in the forms other than the five already mentioned. Otherwise *sulka* will go to him alone who gave the *sulka*, and there would be a conflict with the text of Gautama: "*Sulka* goes to the uterine brothers after the mother."

321. The givers of *sulka* are the husband and the rest. Though they are the givers, it does not go to them, but goes to the owners thereof—the uterine brothers. The meaning is "it goes to them in default of the mother."

322. Therefore alone *sister's sulka* means only the bull and the cow given at the Ársha marriage and not what is given to her in the Ásura and other forms of marriage, for that wealth is declared to him alone who gives it.

323. As for the explanation of Bháruchi, it must be considered to be merely a *proudhaváda*, or a mere assertion in strong language.

324. As for what has been said by Sankha regarding the *sulka* given at marriage, the bridegroom takes this *sulka* (vodha=

(1) Gautama, xii. 40.
(2) Yájñavalkya, ii. 51.
(3) Yájñavalkya, ii. 144.
(4) Manu, ix. 196.
(5) II. Cole. Dig., 620, ccccxii.

bridegroom). He himself shall take the *sulka* : the text applies where the marriage had not been completed.

325. The completion of marriage is the completion of the important homa relative to the marriage.

326. With this intention alone it has been said by Yájñavalkya : "If she die, he shall take what was given (by him)."(1) 'The bridegroom shall take the *sulka*, ornaments, etc.,' should be supplied. He states that this text applies to the case of a maiden betrothed and dying before marriage.

327. Having enumerated the secondary mothers, Brihaspati mentions the sharers of their wealth. "The mother's sister, the maternal uncle's wife, the paternal uncle's wife, the father's sister, the mother-in-law, and the elder brother's wife, have been declared to be equal to mothers. If these have no legitimate son, or the daughter's son or his son, then the sister's son and the rest shall take their wealth."(2)

328. The sister's son] the son of the sister of the owner of the wealth. He takes the wealth of his mother's sister. Thus, all those indicated by the term 'the rest' shall, respectively, take the wealth of her who is equal to his mother. Similarly, the issue though of the co-wife take the wealth of their mother's co-wife in the absence of her issue, her brother, etc.

329. Regarding wealth given on account of supersession, Yájñavalkya states a special rule : "To the wife who is superseded let him give as much wealth as is spent in the supersession, where no stridhana had been given to her; but where it had been given, the half is ordained."(3)

330. She is the superseded wife over whom another is married.

331. He shall give to the wife so superseded as much money as had been expended on account of the supersession. 'Ádhivedhanikam'] money used in supersession. That is the meaning of the *tak* suffix. To her to whom no stridhana had been given either by the husband or by the father. If stridhana had been given, let him give her half the wealth spent in the supersession. The meaning is that as much should be given as with the stridhana already given becomes equal to the money spent in supersession.

332. The claim, therefore, of the daughters and the rest on stridhana property is regulated by their relative proximity of kinship and not by mere texts. It has been already said that the difference of kinship is thus stated : as shown by Vijñánesvara. "Where the semen virile is in excess the child is a male, and where the blood of the female is in excess the child is a female."

(1) Yájñavalkya, ii. 146. (2) Brihaspati, xxv. 88 and 89.
(3) Yájñavalkya, ii. 148.

Stridhana included in the term Dáya.

333. Here sages dispute as to whether stridhana is denoted by the term *Dáya* or not.

334. The contention is that, as according to the Sruti: "Therefore women and those deficient in any organ are not sharers of wealth,"(1) women are unworthy of wealth, division of stridhana is not partition of heritable wealth, but only a division of the wealth.

335. As for the text of Sangrahakára: "Wealth descended through the father and that decended through the mother are denoted by the term *dáya*, and partition of that is now explained," Bháruchi, Aparárka, Somesvarachárya, and others say: "Just as wealth descended through the father is denoted by the term *dáya*, so is also that descended through the mother denoted by the term *dáya*, and as attaching a twofold meaning to the same word, is open to the objection of being burdensome a different meaning should be accepted in the one case or the other. Therefore, the wealth descended through the mother is denoted by the term *dáya* in its secondary sense of 'that which is given.'

336. But Vijñánesvara, Asaháya, Medhátithi and others say: "The term *nirindriya* in the Sruti 'women being *nirindriyás*, etc.,' means those who are totally and not partially wanting in organs; and as according to the text 'the child is a male where there is excess of semen virile and a female where there is excess of the woman's blood,' the possession of a greater or smaller power is shown, women are not totally wanting in indriyas, and, therefore, even women are worthy of heritage; but as the sons have importance at a partition between the father and the sons, there alone women are unworthy of shares. The Sruti also says that even their women are worthy of anything given out of affection. Therefore the text of Sangrahakára which says that the wealth descended through the father and that descended through the mother are denoted by the term *dáya*, is thus understood without any forced construction.

337. Though already stated, it has been here explained for the sake of clearness.

Dvyámushyáyaṇa or son of two fathers.

338. The distinction in the share of a Dvyámushyáyaṇa at a partition is now explained.

339. Yájñavalkya defines him: "The son begotten by a sonless man on the wife of another, appointed to raise issue, is the heir of both and the giver of the funeral cake."(2)

340. Therefore a Dvyámushyáyaṇa is one who has two fathers. He takes the wealth of both and offers pinda to both.

341. The meaning of *parakshetra* is 'wife of another.' She is the wife of another, because of mere betrothal and not of

(1) See para. 21. (2) Yájñavalkya, ii. 127.

marriage, as the appointment in case of women married to another is prohibited.

342. So says Manu: "In default of issue, the offspring desired should be procured by a woman, duly appointed, from her husband's brother or sapiṇḍa. But he who is authorised to beget issue on a widow, being anointed with ghee, and silent, visit her by night and beget one son, but by no means a second."(1)

343. Having thus explained the appointment, the author himself prohibits it: "A widow should not be appointed by any of the twice-born classes to beget issue by another. Those who authorise her to beget issue by another violate the eternal law. In the mantras recited during marriage such appointment is not mentioned; nor is the marriage of a widow mentioned in the marriage rules; for this practice observed in beasts is censured by learned men of the regenerate classes, though inculcated to mankind when Vêna ruled a kingdom. Sovereign of the whole earth, and the foremost among kings of the earth, he gave rise to a condemnable intermixture of the various classes whose hearts were subdued by lust. Good men ever since then condemn the man who, from folly, authorises a woman, whose husband is dead, to raise offspring."(2)

344. Nor could it be said that an option results because the practice is thus both sanctioned and prohibited; because persons authorising are censured, because incontinence is spoken of as a great sin in a woman, and because self-restraint is commended.

345. As Manu himself says: "Let her well emaciate her body feeding on flowers, roots and fruits and let her not, when her husband is dead, even take the name of another. But the woman who, from desire to have issue, violates the bed of her lord, is censured in this world and does not obtain the other worlds."(3)

346. (Thus he) forbids recourse to another man for a son. Therefore it is not right to say that an option arises, because it is both sanctioned and prohibited.

347. Nor could it be urged that the text: 'But a woman who from desire to have issue, etc.,' applies where the husband is alive; because of the text of Vishṇu: "Let her die when her husband dies or keep his bed inviolate."(4)

348. Here it is stated that just as a woman, while her husband is living, is all attention to him and entirely at his control as enjoined by rules of virtue, so she should, when her husband is dead, keep his bed inviolate, for the preservation of her virtue, according to the same rules by implication.

349. So Vijñánesa says that this text applies to a woman only betrothed.

350. Bháruchi and others, however, don't allow this.

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(1) Manu, ix. 59, 60.
(2) *Ibid*, ix. 64—68.
(3) Manu, v. 157, 161.
(4) Vishṇu, xxv. 14.

351. "The text: 'But the woman who from a desire to have issue, etc.,' applies to a woman whose husband is living. The text: 'But a widow should not be authorised by any of the twice-born classes, etc.,' bears the same construction and applies to cases of authorisation, to beget children by any other than the husband's brother, etc. The censure of those who authorise applies to those who authorise the begetting of issue by others than the husband's brother, etc. The texts condemning unchastity as a great sin apply to cases other than such authorisation. Therefore, by the analogy of the practice of those mentioned in the text: 'For this practice observed in beasts, etc.,' unchastity at the mere pleasure of the woman and authorisation to beget issue by others than the husband's brother, etc., are prohibited; for the effect of such authorisation is similar to the practice of beasts. Therefore there is an option between keeping her bed inviolate and begetting male issue. Again, is the injunction to keep the bed inviolate to apply to women who have sons or to women who have daughters in default of them? The begetting of issue by authorisation is indispensable according to the text, 'the offspring desired should be procured in default of issue.' The begetting of issue is more desirable than keeping the bed inviolate." This is the view of Bháruchi, Aparárka, Somesvara and others.

352. This authorisation, though forbidden in the Kaliyuga, is explained here with reference to other yugas.

353. Here Yájñavalkya says: "Let the brother-in-law of the woman whose husband dies after troth plighted, marry her under these rules, and having approached her according to rules, she being clad in a white dress, with a chaste smile, enjoy her in secret once every season till she bear issue."(1)

354. It is understood from this text alone that he to whom a maiden is betrothed becomes her husband by the fact of mere consent.

355. When he is dead, her brother-in-law, *i.e.*, his uterine brother, elder or younger, can marry her. According to rules] without violating the Sastras. Under these rules] anointed with ghee, silent, etc. Let him approach her once every season and in secret, she having a white robe and being pure in mind, speech, and body, until she conceives.

356. This is a marriage based on texts, and should be considered to be a preliminary to his approaching the authorised woman, like anointing himself with ghee, etc.

357. Therefore it does not make her the wife of her brother-in-law. Hence the issue begotten by the brother-in-law belongs only to the owner of the soil and not to him. But, if there be special compact, then it belongs even to both.

358. This authorisation of the betrothed maiden is explained

(1) A somewhat similiar passage is found in Yájñavalkya, i. 68, 69, but this very passage occurs in Manu, ix. 69, 70.

in accordance with the view of Vijñánayogi. But it should be remembered that, according to the view of Bharuchi and others, authorisation is allowed even of the widow as also of the betrothed maiden.

The twelve sons, primary and secondary.

359. Yájñavalkya gives the definition of the primary and secondary sons: "The *aurasa* son is the son born of the legal wedded wife. Equal to him is the son of an appointed daughter. The *kshetraja* is the son begotten upon the wife by one of the same gotra or by another. That son is declared the *gudhájá* who is secretly born in the house. The *kánina* is the son born of a maiden and is regarded as the son of his maternal grandfather. The *paunarbhavá* is the son born of a twice-married woman whether her first marriage had been consummated or not. He whom his father or the mother gives becomes the *dattaka* son. The *kríta* is the son who has been sold by them and the *kritrima* is the son made by oneself. The son who gives himself is *the son self-given*. The *sahodhája* is the son born of a pregnant bride. The *apáviddhá* is the son who is taken as such, being abandoned."(1)

360. Aurasa] born of the breast. That son born of the legal wedded wife is chief in rank.

361. The son of the appointed daughter is equal to him, *i.e.*, the aurasa son, according to the text of Vasishṭha: "I give you this brotherless maiden decorated in the hope that the son who shall be born of her may become my son."(2)

362. The word *putrikasuta* is a compound of the word *putrikáyáh* and *suta*, i.e. the appointed daughter's son; or it may as well be a *karmadharaya* compound resolvable into *putrikaiva* and *suta*, as Gautama says: "The third is the appointed daughter herself,"(3) meaning that the third son is the appointed daughter herself.

363. Kshetraja] the son of the wife begotten by authorisation. The word *Jata* is connected with 'by one of the same gotra, etc.' By another] by one who is not a sapiṇḍa, or by the brother-in-law.

364. *Gudhája* means 'one born in the house of his father in secret.' 'If it is ascertained that he is begotten by one of the same caste' should be supplied.

365. Thus, it should be inferred even in the case of the *kánína* and others.

366. "The son whom the mother and the father give in distress, being alike by class and affectionately disposed, should be known to be the *dattrima* son."(4)

367. From the use of the phrase 'in distress' he should not be given except in distress. This prohibition regards the giver.

(1) Yájñavalkya, ii. 128—132.
(2) Vasishṭha, xvii. 12.
(3) Gautama, xxviii.
(4) Manu, ix. 168.

368. Similarly, an only son should not be given according to the text of Vasishṭha: "Let him not give or take an only son."(1)

369. Even if there be many sons, the eldest should not be given, he alone being chief in doing the duties of a son, according to the text: "By the mere birth of the eldest son a man becomes the father of a son."(2)

370. Vasishṭha states the manner of taking a son in adoption. "One who wishes to take a son should invite his kinsmen, inform the king, perform a homa in the middle of his house by reciting the vyahritis, and take one who is not an unremote kinsman, and who is the nearest among his relatives."(3) By the term 'an unremote kinsman' one very much distant by country and by language is prohibited. By the term 'the nearest' distant sagotras are prohibited.

371. The *krita* son is one sold by them, *i.e.* by the father and the mother, or by the mother or the father; excepting, as previously stated, an only son, and the eldest son, and with the restrictions, 'in distress,' 'of the same caste,' etc.

372. As for what has been stated by Manu: "But he whom one purchases, for the sake of issue, from his mother and father is the *krítaka* son of the person so purchasing, whether alike or unlike,(4)" that must be explained as 'alike or unlike by qualities, not by caste, by virtue of the conclusion 'this is propounded in respect of men of the same caste."(5)

373. The *kritrima* is the son made by oneself. The *kritrima* is one who, having neither father nor mother, is taken as his own son by one desirous of a son by such enticements as the display of wealth, land, etc. For, were they alive, he would be under their control.

374. The self-given son is one who, having neither father nor mother or being abandoned by them, gives himself with the words, 'I will become your son,' and is invested with the sacred cord.

Partition among sons previously defined.

375. Yájñavalkya states the mode of partition among them. "Of these the one succeeding is, in the absence of the one preceding, the giver of the pinda and the taker of a share."(6) Of these twelve sons, previously enumerated, the one succeeding should be known, in the absence of the one preceding, to be the performer of the sráddha, and the taker of the wealth.

376. Manu seeing that where there are both the aurasa son and the appointed daughter, the aurasa takes the wealth, lays down an exception: "When, after an appointed daughter is made, an aurasa son is born, then the division shall be equal, for women have no right of priority of birth."(7)

(1) Vasishṭha, xv. 3.
(2) Manu, ix. 106.
(3) Vasishṭha, xv. 6—9.
(4) Manu, ix. 164.
(5) Yájñavalkya, ii. 133.
(6) *Ibid*, ii. 132.
(7) Manu, ix. 134.

377. Similarly, it has been said by Vasishṭha that the sons named after take a fourth share, even if there be sons previously named. "When after one is adopted an aurasa son is born, the adopted son shall take a fourth share."(1)

378. The use of the term 'adopted son' is for the purpose of including the son bought, the son made, etc.; for there is no difference in respect of their being made sons.

379. So Kátyáyana also says: "But when an aurasa son is born, the other sons take a fourth share if of the same caste, but those of other castes receive only food and raiment."(2) Of the same caste] the kshetraja, the adopted son, etc. They take a fourth share if there be an aurasa son. 'A fourth share' means 'a share equal to the share allotted to the fourth son in an equal partition, *i.e.* a fifth share,' according to the Smriti 'Afterwards the adopted son, the kritrima son, etc., take a fifth share.'(3) Afterwards] when an aurasa son is subsequently born. Those of different caste] the kánína, the gudhajá, the sahodhá, and the paunarbhavá. Although they are named *kanina*, etc., when they are ascertained to be of the same caste, etc., still they are said to be of different caste when their being of the same caste is doubtful.

380. As for what has been said by Manu also: "The aurasa son alone is the sole lord of the paternal wealth, but let him give maintenance to the rest out of affection."(4)

381. Vijñánesa says that that also should be understood to apply where the adopted son and the rest are adverse to the aurasa son and are devoid of good qualities.

382. But Somesvara says that by the use of the term 'the rest' it is meant that maintenance should be given only to the others than the adopted son, etc., *i.e.* the kánína, the gudhajá, the sahodhá and the paunarbhavá.

383. But Bháruchi says that the meaning of the text: "The legitimate son alone" is "an adopted or other son can be made where one has an only son. In such a case maintenance should be given by the son existing before the adoption to the adopted son, &c., and not to others."

384. This certainly is the better view.

385. A distinction is shown by Manu in the case of the kshetraja son: "The aurasa son dividing the paternal wealth shall give to the kshetraja out of the paternal wealth a sixth or even a fifth share."(5)

386. Of the twelve kinds of sons only six are sharers. The aurasa, the kshetraja, also the appointed daughter, the adopted son, also the gudhajá and the apaviddhá are the six heirs and kinsmen. The kánína, the sahodha, the kríta, the paunarbhavá,

(1) Vasishṭha, xv. 9.
(2) II. Cole. Dig., 348, ccxviii.
(3) Not found.
(4) Manu, ix. 163.
(5) Manu, ix. 164.

the son self-given, and the son by a Súdrá wife are not heirs but kinsmen."(1)

387. Kinship of both these sets of six sons is equal. Therefore, being of the same gotra and being sapiṇḍas, the right of both these classes to offer libations of water is the same. But it should be remembered that in the absence of nearer heirs of their father's samánodakas and sapiṇḍas, the former six alone take the wealth and not the other six.

388. If it be asked, seeing that the adopted son loses the gotra and the sapiṇḍa relationship of his natural father, according to the text of Manu: "The adopted son shall not have the gotra and the wealth of his natural father; the pinda follows the gotra and the wealth and oblations to the giver (in adoption) cease,"(2) how even the adopted son is, by the text of Vishṇu, enjoined to perform the oblations to his natural father, we say that that text should be known to apply in the absence of other issue of the natural father. This will be subsequently dilated upon.

389. Therefore among all the substitutes of sons other than the aurasa, there is no distinction in their right to take the wealth in the absence of those preceding them. As for the aurasa, his right to take the wealth is stated by the text, 'the aurasa son alone is sole lord over all the paternal wealth.'

390. As for the text: "If, among brothers of the whole blood one has a son, Manu has declared that all of them are fathers of son by means of that son,"(3) that text also is to prohibit the adoption of others where it is possible to adopt the brother's son and not to show their sonship; for that conflicts with the text: 'His son, the gotraja, the bandhu, etc.'(4)

391. The author of the Chandriká, however, says that the text is intended as a eulogy.

392. Dháresvara and Devasvámi, however, are followers of Vijñánesvara's view, as it has been said by Devasvámi: "Even in both cases no other substitute should be made." The meaning of this is—: Even in both cases] regarding the two texts: 'If many sons of the same person' and 'among brothers of the whole blood.' Where it is possible to make the brother's son a substitute for a son, no other substitute should be made.

393. As sons of the *anuloma* caste, however, such as Murdhavasikta, etc., are included even among the aurasa, it should be understood that the kshetraja and other sons take the wealth in the absence of these.

394. The son by a Súdrá wife, though an aurasa, does not take all the wealth even in the absence of another. Manu says: "Whether he has a son living, or whether he is sonless, he shall not, according to law, give his son by a Súdrá woman, more than a tenth

(1) Manu, ix. 159, and 160.
(2) *Ibid*, ix. 142.
(3) Manu, ix. 182.
(4) Yájñavalkya, ii. 135.

share."(1) He has a son living] he has a son of the regenerate class living. He is sonless] any other man.

395. Yájñavalkya lays down a special rule regarding the partition of a Súdrá's wealth: "Though begotten on a female slave by a Súdrá, he is declared entitled to share at the option (of the father). When the father is dead, let the brothers make him partaker of half a share. If he have no brother he shall take the whole wealth in default of the daughter's son."(2)

396. The meaning is that even when there is a daughter's son, the son of the female slave takes only a half.

397. From the use of the word *Súdrá* in this text, (it follows) the son begotten on the female slave by one of the three regenerate classes does not take a share even at the father's option, nor even a half, much less the whole; but only receives maintenance.

398. Thus ends the chapter on Partition of unobstructed heritage.

Partition of the wealth of a separated deceased person.

399. On the question who takes the wealth of a deceased person, separated, sonless and not re-united, Yájñavalkya says: "The wife, the daughters also, the parents, brothers likewise, their sons, gentiles, bandhus, the disciple, and the fellow-student; the one succeeding among these takes the wealth of a deceased sonless man in the absence of those previously mentioned. This law applies to all classes."(3)

On the nature of property.

400. This rule regarding the order of the devolution of ownership on the wife, etc., is based upon the ground of relative propinquity and is not a matter of mere texts, for the relationship to the owner of the wealth is not deducible from texts.

401. That is to say, ownership is temporal, being created by worldly acts such as rice, etc.

402. The sacrificial post, sacrificial fire and the office of preceptor, etc., which are not temporal, are not created merely by temporal acts such as chiselling, but by chiselling &c., coupled with regulations regarding the reciting of mantras, etc. There is, therefore, no fallacy.

403. But the injunction regarding the recitation of mantras at the time of acceptance of a Vedic gift is for securing the invisible effect of the gift and not for the creation of ownership; for ownership is seen to arise even in the case of acceptance of a gift not Vedic and not preceded by mantras. Thus it has been explained at length in the Lipsasutra.(a)

(1) Manu, ix. 154. (2) Yájñavalkya, ii. 133 and 134.

(3) Yájñavalkya, ii. 135 and 136.

(a). The aphorism here referred to is the 2nd adhikarana in the 1st páda of the 4th book of Jaimini's Sutras. Vide Note (a) p. 3 of this volume.

404. As for what has been stated by Vijnánayogi: "Ownership is temporal, because like rice and other things, it has the capacity of accomplishing temporal acts," the statement is against written authority and superficial, because it is laid down by Guru in the Lipsasutra that the temporal nature of ownership arises through its capability of being created by temporal acts alone. After defining ownership, "ownership has the capacity of alienating at pleasure," it is laid down by that work "by the term *ownership* is meant any kind of relationship arising out of acquisition."

405. The meaning is this:—Acquisition is the creation of a relationship between the doer and the deed because of its transitive character. It cannot be said that there is a logical error in such sentences as; "He has left the village"; for, the highest form of connection, such as intimate union, etc., is not established here; but the springing of the acquisition of a something additional in the subject and the object is established; and this is called their relationship, because it has the form of a cessation of their inactivity. Even in such sentences as, "He has left the village:" there is a something additional in the village, which is pregnant with an act in the form of the separation.

406. Nor can it be said that the clasping of the hand in the act of receiving is the additional something; for it would be a fallacy, as it does not exist in the case of birth.

407. Nor can it be said that the root "to be born" cannot imply that additional something because it is intransitive; for when it is denoted by the root "acquire", it becomes transitive.

408. The meaning is this:—The word "to be born" implies a connection with the act of the doer; if it did not previously exist, it could not be the seat of an action, and if it did previously exist, it could not be born again; therefore the word "to be born" implies the connection of what is born with an act of what brings forth.

409. The same perception is intransitive when expressed as "the pot appears," and transitive when expressed as "know the water-jar."

410. According to the doctrine of Guru, there is no difference between appearing and knowing, as it has been stated by Guru that thought is knowledge.

411. Therefore the drift of the Mimámsá is, that the additional something produced by acquisition is called ownership; therefore, it is clear that Vijñánayogi's doctrine is against written authority.

412. The doctrine is cursory because it is fallacious, as being applicable to the office of the preceptor which leads to his being worshipped by the disciple and to his acquisition of wealth and to the case of the Chitrakariri sacrifices, etc., productive of cattle, rain, etc.

413. Nor could it be said that, as the same fallacy pointed out in respect of the sacrificial fire is easily disproved by stating that, as mere fire, it helps such worldly purposes as boiling of rice, etc., and not as the sacrificial fire purified by mantras, etc., so the fallacy pointed out in this instance also could easily be disproved; for that being altogether spiritual in its nature, the differentiation of a temporal and a spiritual element in it is impossible.

414. As for what has been thus stated, "the invisible result of Chitra sacrifice is one produced by means of the Sastras alone; it is not as such that it produces cattle, etc., but by its efficacy when it is accomplished, and this form of it is not to be known from the Sastras alone, for it could be well known by inference from effect to cause; therefore, as in the case of the sacrificial post and the sacrificial fire, etc., it is imposible to point out a fallacy",

415. That is unsound. The injunction regarding the sacrificial post, fire, etc., being meaningless in respect of their temporal form, it is there possible to postulate a spiritual element in them; but where the form is altogether spiritual, the assumption of a temporal element is impossible for want of reason.

416. Again, the invisible effect produced cannot be known by inference from the effect to the cause, for there will be no motive to investigate it; even if that be, the process of reasoning employed (*i.e.*)the invisible effect knowable by the Vedas has been produced, because the fruit of it such as cattle, etc., has been produced, is an inference by means of its form as knowable by the Vedas and does not touch the question started; there is thus nothing lost.

417. As stated by Guru at the beginning of the 9th Chapter, although the form knowable by the Vedas is temporal, the true nature knowable by the Vedas is spiritual.

418. Nárada states the meaning of this passage; "The knowledge that the invisible effect is denoted by the potential mood, touches the invisible effect, not by its nature as invisible effect but by its form, as something denoted by the potential mood. Thus, its being knowable by a knowledge in this form does not contradict the definition of invisible effect as something knowable only by the Vedas, that the sacrificial post, fire and the rest, known by their form of being knowable by the Vedas are none the less knowable only by the Vedas."

419. Therefore, it is established that the reason alleged here is cursory.

420. It may be said that the office of Áchárya is temporal, for the word is used to denote one who gives instruction in the Vedas; therefore the capacity of being denoted by the potential mood intended in that case is negative, as it has been stated by the ancients: "Let the term 'sacrificial post and the rest' be admitted to denote something which is not worldly, because they are not used anywhere in the world and are used only in repect of matters accomplished by precepts; but the term Áchárya has not such a

denotation, because these two reasons do not apply to it." Thus the grounds on which the view of Guru is based are refuted by learned persons.

421. Not so; it must be considered that the text, "But him of the regenerate class who, after investing the disciple with the sacred cord, must teach him the Vedas with its rituals and secret meaning, they call the *Ácharya*,"(1) was declared for the purpose of removing doubts regarding the signification of the word Achárya used in the authoritative Srutis and Smritis.

422. In whatever sense this text is found to result, after logical investigation, according to that sense must the Smritis be construed.

423. There, though the meaning of the words seems to be the combination of certain acts, still the purport of the text is not merely a combination of acts. Were it so, it would simply become the statement of a definition and this cannot be; for it would have stated the definition thus for removing the doubt, "but that man of the regenerate class who, after investing his disciple with the sacred cord, teaches him the Vedas".

424. The laying down of a rule not to be used as such is inappropriate, and reflects unreasonableness on the part of the persons stating the rule: If teaching enjoined is alone the characteristic of the Ácharya, then the injunction will be pertinent. Thus it should be understood that the text: 'He must teach after investing with the cord, &c.,' makes the teaching in virtue of the injunction the defining characteristic of the Ácharya.

425. Nor can it be said that both these purposes are impossible, because there would then be a splitting of the sentence; for that there is no blame in splitting a sentence which is under the control of its author is declared by the author of the Sutras using the word *artha* in the Chodana Sutra.(a)

426. The word but distinguishes the *Ácharya* from the *Upádhyáya*, (a mere teacher of the Vedas).

427. If it be urged that teaching itself cannot be the subject of an injunction, because the motive to teach is otherwise supplied.

428. We say: Not so; he who contends that it is otherwise supplied must be asked whether it follows from the injunction to study or as a matter of profession?

429. Not the first; Guru has stated, at the beginning of the Sastras, thatthe injunction to study in the absence of persons entitled to do so is unable to accomplish its own observance. That must be determined from there.

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(1) Manu, ii. 140.

(a). *The Chodana Sutra.* Vide the 1st adhikarana, 1st páda, 1st Adhyáya of Mimamsa. In the course of dilating upon the main topic of discussion there, the author asserts the principle of construction that a splitting of the sentence is allowable where the author intended such splitting.

430. Not the second; even the utility of teaching as a profession is truly the office of the Áchárya, and as its result is to produce the Áchárya, it does not affect the precept.

431. Thus teaching is made the subject of an injunction, for its statement as a mere definition would be inappropriate, seeing that the act of teaching is not deducible from other sources or injunctions.

432. Or, as Smritis should not be made to subserve the mere end of facilitating worldly parlance, it should be admitted that the end is the accomplishment of the injunction to confer a boon which depends upon the ascertaining of the denotation of the word 'Áchárya.'

433. In that text of the Srutis: "To the Áchárya a boon should be given," the meaning of the word 'Áchárya' is indicated by the dative case. The word 'Áchárya' does not denote the act of teaching at the time when the boon is given to him, for that has passed.

434. Nor is his personal form merely intended; as that could be got at even without an injunction, the precept will be purposeless.

435. Nor is the word 'Áchárya' used in the Smritis and Srutis in reference to the act once done, though not then, for it is not reasonable to say that the important Smritis, which are declared to determine the true import of the word 'Áchárya', are intended to elucidate this inferior meaning.

436. Moreover, that which is to be indicated is not known; for here there is no special form which can be indicated by the connection with acts previously done, as the form of a lion indicated by means of the cage in the expression, "the lion and the cage;" therefore, when it is understood, from the force of the injunction to confer a boon, that what is denoted by the term 'Acharya' is an invisible something distinct from connection with the act of teaching and continuing even at the time that the boon is conferred on him, there arises the inquiry as to acts which produce that invisible something, and the Smriti is understood to lay down an injunction regarding the acts which make up its definition.

437. Accordingly, an original Vedic text corresponding to this should be inferred in the form, "He must teach after investing with the cord."

438. If it be asked: "The inference that a Vedic text exists in the form of an injunction authorizing one to teach, as 'he who wishes for the office of the Áchárya must teach', should be drawn in order to show that study is enjoined by the precept which creates the Áchárya, how, then, is an inference to be drawn that a Vedic text exists in the form just sufficient to make the office of the Áchárya denotable by the potential mood?",

439. Not so; the text, which is intended merely to define the Áchárya included in the injunction to confer a boon, should be admitted to have done its duty by describing the acts which produce the invisible office of the Áchárya required by it; its object was

not to authorise anybody in respect of them, because that would be an additional burden, and because it was not in requisition.

440. The state of the Áchárya is that which determines the use of the word 'Áchárya,' because the natural function of *tva, tal* and the rest is to denote that which determines the use of words.

441. That state of the Áchárya is the invisible something produced by teaching after investiture with the sacred cord. Therefore the precept prescribes that alone and nothing besides; the text intends only to enjoin those acts in order to answer an inquiry induced by the injunction to confer a boon, and does not intend anything other than that, such as the invisible effect, the subject of authority.

442. Therefore it is clear that there is both a want of enquiry and unnecessary prolixity.

443. Moreover, the office of the Áchárya being neither in the nature of positive comfort nor in the avoidance of misery, it is not possible to postulate such fruits as generally result from injunctions, such as heaven, etc.

444. But as it is denoted by the potential mood, though it is not in the nature of positive happiness or avoidance of misery, the office of the Áchárya is in the nature of a third benefit knowable only by the Vedas, and as even in the Veda extant, the injunction regarding the ádhána, etc., intends only such benefit, and as it is therefore not a matter of inference, there is no inconsistency whatever.

445. If it be urged that it has been stated by Bhavanátha, one must ascertain the office of the Áchárya by the teaching after the investiture,

446. We say: The intention of Bhavanátha is:—Though the form of the text "he must teach after investing" is proper, because the invisible something produced by the acts is the meaning of the potential mood, still as that invisible something is recognised in the Smritis as denoted by the term *office of the Áchárya*, it secures the authority to teach, being desired by the teacher on account of the boons which it procures and not by the mere injunction as in the case of Nitya rituals. To show this, this text in the form: "By teaching secure the office of Áchárya" makes the teaching the productive cause of the office of Áchárya.

447. Therefore Sárikánátha, after offering a similar commentary on the text, states that the authority of him who desires to become an Áchárya arises by implication; his intention is that his explanation of the text is so worded as to show that the acquisition of authority is implied.

448. If it be urged that if this were so, the office of the Áchárya will not, as desired, be denoted by the potential mood, because the potential mood is only confirmatory of the injunction, as the text is merely intended to describe the acts which produce the office of

the Áchárya required by the injunction to confer a boon; though for want of proximity it may not be confirmatory of the injunction in respect of the taker, still, like the potential mood in the injunction regarding the ádhána, it is certainly confirmatory of the injunction in respect of the giver.

449. Not so; the ádhána samskára relates to the fire, and cannot therefore be denoted by the potential mood, and therefore it was accepted that the potential mood is confirmatory of the invisible effect in the giver, but the samskára of the office of the Áchárya produced by teaching relates to the teacher and is therefore denotable by the potential mood: Therefore that the potential mood is only confirmatory should not be accepted.

450. Even thus as the samskára conferring the capacity of the Áchárya enters into the rule conferring authority though productive of pecuniary benefit like the samskára of the Ritwik, it does not even produce the capacity to teach. Thus the authority (the point desired) is yet more distant. Otherwise the samskára of the Ritwik will confer the authority to perform and cause the performance of sacrifices.

451. Not so. Notwithstanding it enters into the rule conferring the authority, it really possesses the power of authorizing one to teach, the office of Áchárya being sought by the teacher for the sake of pecuniary gain in the shape of boons granted.

452. But in the case of the samskára of the Ritwik, though it is productive of gain, it being obtainable at the solicitation of the sacrificer and therefore not capable of producing gain at the independent will of the Ritwik, it does not confer an independent authority and is not productive of benefit at his will: this is the difference.

453. Therefore it should be understood that the form of the text 'he must teach after investing' is really approved by Bhavanátha.

454. Therefore the reason 'because it is the means of accomplishing temporal acts' is established to be fallacious.

455. Some, thus, cure the defect. They interpret the language, stating the reason to mean 'because it is accomplished by temporal acts'; they make the word in the original a bahuvrihi compound, and say that it should be understood that there is no fallacy even according to Vijñánesvara's view.

456. That is unsound. The abandoning of the tatpurusha compound, and accepting the inferior bahuvrihi compound, is like one's falling into dirt when running away from fear of mud.

The causes of property.

457. Thus, it being established that property is a matter of popular recognition, the rules of Gautama: "One becomes owner by inheritance, purchase, partition, seizure, and finding. Acceptance is an additional mode for a Bráhmin; conquest, for a Kshatriyá; and

gain for a Vaisyá and Súdrá,"(1) are so many modes of acquiring wealth popularly recognised.

458. The five beginning with inheritance are common to all.

459. Riktha is 'what secures the inheritance'; birth which creates ownership in the wealth of the father, &c.

460. Accordingly, it is stated by Gautama himself to be the reason for taking the wealth of the father. "According to Ácháryas he obtains ownership by mere birth."(2) By mere birth] by his body being conceived in the mother's womb.

461. Therefore only Vishṇu says: "Ownership is acquired by birth."(3)

462. "This is of the son alone, not of the daughter," so says Bháruchi.

463. The author of the Chandriká says: "Partition is division which creates an exclusive ownership in a particular portion of the paternal wealth, &c."

464. Vijñánesvara, however, says: "Dáya is unobstructed heritage. Obstructed heritage is partition; though the word *riktha* means 'obstructed heritage' in the texts: 'He who takes the heritage shall be made to pay the debts,' &c., still *riktha* here contemplates 'unobstructed heritage,' for, otherwise, the use of the word 'vibhága' will be redundant. By the word 'vibhagá,' is indicated the obstructed heritage which arises subsequently to it, for partition is not the cause of ownership."

465. Bháruchi and others will not brook this and say: "In respect of unobstructed heritage, the intimate relationship of birth is necessary; but in respect of obstructed heritage, absence of impediments cannot be the cause of ownership, for it is trivial."

466. "Seizure"] the user of water, grass and wood found in forests, &c., and not appropriated by others.

467. Finding] obtaining of treasure, &c.

468. When these reasons exist, the son, &c., the purchaser, the separated coparcener, the person who seizes or the finder, becomes respectively owner of the paternal wealth, of what is purchased, of the share allotted, of the property seized, or of what was found.

469. Similarly, what is accepted as gift is a special mode of acquisition for a Bráhmin: so for a Kshatriyá, what is gained by conquest: so for a Vaisyá, what is obtained as wages for agriculture: and for a Súdrá also, what is obtained by service rendered to the regenerate classes is his additional mode of acquiring wealth. It must be understood that such is the meaning of the text of Gautama which regulates the modes of acquiring wealth.

470. The meaning is, that this rule is declared just like the rule of Grammar, which regulates the correct use of words.

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(1) Gautama, x. 39—42. (2) Not found.

(3) Not found.

471. This is the secret here—that Gautama took the trouble of laying down this rule for the purpose of fixing men to these well-known and popular modes of acquiring wealth, by giving them a spiritual significance among the Bráhmin and other classes.

472. Accordingly, by the text: "When Bráhmins acquire wealth by any censurable deed, they become purified by giving up the wealth, by prayer and by penance"(1), if ownership is a creature of the Sacred Codes, the acquirer has no ownership in wealth obtained by condemnable deeds, as acceptance from bad people, trade, &c., and therefore his sons cannot divide it. But if ownership were a matter of popular recognition, then, as he has ownership even in wealth acquired by acceptance from bad men, &c., it is certainly partible among his sons. The expiation prescribed "they become purified by giving it up, &c.," applies only to the acquirer; but no blame can attach to the sons, because they become owners of it as heritage according to the text: "There are seven virtuous modes of acquiring wealth—inheritance, acquisition, purchase, conquest, trade, service, and proper acceptance of gifts."(2)

473. If ownership be a temporal matter, then alone, ownership can be created in another or be lost by mere will. In some instances, however, ownership is lost only by the commission of great crimes and not by mere will. Therefore is it explained at length in the Lipsasutra that the relationship of father and son and husband and wife ceases on the commission of great crimes.

474. Let ownership be a temporal matter, and proprietorship be a creature of the Sacred Codes, as logically stated by Sangrahakára: "He who holds a thing in his hand is not its owner. Is not the property of one man found in the hands of others such as thieves? Therefore proprietorship is deducible from the Sastras alone and not from possession." The meaning is, that proprietorship is therefore deducible only from the Sastras and not from other modes of proof.

475. Not so; for ownership and proprietorship being on the same footing, when one of them is proved to be temporal, it must be inferred that both are proved to be temporal.

476. Therefore, according to this treatise, we truly perceive that the fact of its being secured by worldly transactions is, for want of an instance to the contrary, the reason of the temporal nature of ownership.

477. Accordingly, ownership being a temporal matter, it is established that the order of the devolution and proprietorship is based only on logic and not upon express texts.

The wife's right to succeed.

478. It has been stated by Vijñánayogi: "As for the text, 'the wife, the daughters, etc.,' that regulates the order of succession depending upon relative proximity of ownership, in order to remove

(1) Manu, x. 111. (2) Manu, x. 115.

any doubts which may arise where there are rival claimants related to the owner."

479. It may be said that according to the rule, 'the wife, the daughter, etc.,' the wife takes the share of her husband, and that even the wife of an undivided coparcener may take her husband's share, the text that she is declared half her husband's body being alike applicable in both the cases.

480. Not so; the rule, 'the wife, the daughters, etc.,' can apply only to wives of divided coparceners, because they alone have definite exclusive property. As in the case of wives of undivided coparceners, their husbands have no definite exclusive property, and as it is impossible that they should take their husbands' share of the common wealth, it should be understood that the rule, 'the wife, the daughters, etc.,' applies to wives of divided coparceners.

481. It may be urged that if this were so, then, when all the undivided brothers go to heaven, their wives cannot take their shares; but it has been declared "wives of undivided coparceners take their shares." 'In default of all brothers' should be supplied.

482. Here it is answered: Regarding the text, "The wives of undivided coparceners take their shares" though there may be the gnatis of their husbands, still as they have no brothers, all their wealth is established to be, in the result, their exclusive property, and therefore the above rule easily applies in their case as in the case of divided coparceners though they be undivided. So their wives alone take their shares.

483. Vishnu's view here is, that no distinction should be made between those who have daughters and those who have none.

484. The expression "the rules, of wives, daughters, etc.," is a repetition of the beginning portion of the text, "the wives, daughters, etc."

485. Manu shows that the rule in "the wives, daughters, etc," is based upon relative nearness of kinship. "The father takes the wealth of the souless man or even the brothers."(1)

486. From the use of the word *va*, it follows that the order mentioned is not contemplated.

487. Sangrahakára states the drift of this text: "By whom should the wealth of a wealthy man deceased, having no sons of any kind, be taken, will now be explained."

488. The meaning of this is:—If it is asked by whom should be taken, the wealth of a deceased man, having neither primary nor secondary sons, then Manu says that it should be taken by the father, etc., in default of relatives nearer than the father to the deceased and conferring more benefits on him.

489. Therefore alone, has Sangrahakára, knowing that the secondary sons are nearer than the father, etc., explained the word

(1) Manu, ix. 185.

sonless in the text, 'the father takes the wealth of a sonless man' to mean "having no sons of any kind."

490. That, certainly, is unexceptionable; but just as secondary sons are nearer than the father, etc., because they go before the father in the matter of conferring both visible and invisible benefits, so even the wife is nearer than the father, etc., because she goes before them in the matter of conferring benefits, on a consideration of the texts of Srutis and Smritis.

491. The drift to be inferred is that Manu, in saying that the father takes the wealth of a sonless man, meant that he should take, in default even of the wife.

492. Therefore alone Brihaspati knowing that, in default of secondary sons, the wife is nearer than any other in the matter of conferring visible and invisible benefits, has laid down that the wife alone takes the husband's wealth even where the father, etc., and the sakulyas exist: "In the Vedas, in the codes of Law and in the practice of the world, the wife has been declared by the sages to be half the body and equal (to the husband) regarding the fruits of virtue and vice. Of him whose wife is not dead, half the body survives; when half the body survives, how shall another take (his wealth)? Though persons of the family, the father, the brothers or uterine sisters be alive, the wife takes the wealth of the sonless deceased."(1)

493. By the use of the expression, 'declared to be half the body' in the second hemistich of the text, the nearer kinship of the wife than of the father, etc., is expressed.

494. The meaning of the text by parts is:—Ámnáye] in the Vedas, in such passages as 'what is called one's wife is half himself, etc.' Himself] his body. Smrititantré] in codes of Law, in such passages as "of him whose wife drinks wine, half the body falls; no expiation is ordered for him, half whose body has fallen." Lokácháré] in codes treating of customs obtaining in the world, in such passages as "what intelligent man will abandon his wife who is half his body, etc." In fruits of virtue, etc.] being inseparably associated with their husbands in all karma. Sonless] having neither primary nor secondary sons.

495. Patni, namely the wife, married according to the commendable forms of marriage, Bráhma, etc., furnishing her with authority to perform sacrifices according to the text of Panini: "When connection with sacrifices is implied, the letter *na* and the suffix *gnip*, are added to the word *Pati*."

496. Not the wife purchased, because she being excluded by the term Patni, true wifehood does not attach to her.

497. Accordingly, another Smriti also says: "The woman purchased for a price is not named a Patni; in the worship of the Devas and the manes, she has no place; sages regard her as a slave."

(1) Brihaspati, xxv. 46—48.

498. The expression 'regard her as a slave' is used to indicate that being no wife, she confers merely visible benefits and not invisible benefits.

499. Here some say that the statement of the author of the Chandriká, that the Patni is the wife married according to rituals, is illogical, for the sacrament of marriage does not create wifehood; wifehood is nothing other than the relationship of husband and wife, and that relationship is that between the acquirer and the acquired and that is merely a temporal matter, therefore alone the relationship of wife ceases on the commission of a great crime, and the notion of being the wife is a recollection of what she was. The prayers recited at marriage do not create wifehood. In the Lipsa-sutra it has been stated by Guru that the object of such recital is to effect the Vedic gift.

500. It is not so; Guru has said that only the property in the wife is a temporal matter, not wifehood; for there is a difference between property in the wife and wifehood. She is Patni because of her association in sacrifices, and she is property because of the relation to the owner. The text also of Guru, that the relationship of wife ceases on the commission of a great crime, etc., bears this meaning.

501. "Relationship of wife means property in the wife and not wifehood; otherwise when expiation is made, wifehood cannot again be produced." So says Bháruchi.

502. That being the view of the author of the Chandriká and others, it is well said that the wife married in the Bráhma and other forms is called Patni.

503. Therefore Brihaspati states that even in the performance of rites in honor of the deceased husband, the wife takes precedence over the brothers, etc. "In default of the sons, it shall be the wife; but in default of the wife, the uterine brother."(1) "In the offering of pinda" should be supplied.

504. Here Vriddha Manu says: "The wife alone who, being sonless, keeps the bed of her lord inviolate and perseveres in a virtuous course, shall give the pinda to him and take his entire wealth."(2)

505. In the latter hemistich, the order is to be understood according to the sense rather than according to the reading. The wife first takes her husband's wealth and then gives the pinda, and not the brothers, etc., while she lives.

506. The text "the succeeding gives the pinda and takes the wealth, in default of those previously named,"(3) should also be construed similarly, because the taking of the share is stated as a reason for giving the pinda.

507. Keeping the bed inviolate] thoroughly self-restrained.

(1) Not found. (2) II. Cole. Dig., 535, ccccviii.
(3) Yájñavalkya, ii. 132.

508. Prajâpati explains the meaning of the word *entire* in 'she takes the entire wealth' thus: "Having taken the moveable and the immoveable property, the gold, baser metals, grains, liquids and clothes, she shall cause to be performed the monthly, half-yearly, and other srâddhas. She shall propitiate the paternal uncle, the spiritual preceptor, the daughter's sons, her father-in-law, and maternal uncles with offerings of food and charitable gifts, as also the aged, the friendless and the guests."(1) The baser metals] tin, lead, etc. Offerings of food] balls of food intended for the manes. Charitable gifts]; their nature has already been explained.

509. This shall be explained:—After taking his entire wealth including immoveable property, the wife should perform, according to the wealth taken by her, all such pious acts as are conducive to the spiritual welfare of her husband and herself, and as can be performed by a woman with the aid of wealth. Such as srâddhas, charitable endowments, etc.

510. As for what has been stated by Brihaspati: "Let the wife whose husband is dead take the property of her separated husband however small, whatever its nature, mortgaged property, etc., excepting immoveables,"(2) it means that the wife shall take all the property which belonged to her divided husband, immoveable and moveable, however small, mortgaged or of any other kind.

511. From the use of the word *divided*, it is inferred that where the husband was undivided, the brothers and others who live together shall alone take the wealth of the soulless deceased. Although this has been logically stated previously, it is still mentioned here.

512. The author of the Chandriká says: "The phrase *excepting immoveable property, etc.*, applies to wives having no daughters. If it were to apply to all wives it would conflict with the previous text: "Having taken the moveable and the immoveable property, the gold, baser metals, grains, liquids and clothes, she shall cause to be performed the monthly, half-yearly, and other srâddhas."

513. Here the meaning of the author of the Chandriká is this:—Where there are both wife having daughters and wife having none, immoveable property goes to the one having daughters and not to the one having none; but the wife having no daughters takes a share of the moveables. In moveable property she takes her proper share. When there is only the wife having no daughters, she alone takes both the immoveables and the moveables, and not the mother or any other though having daughters, because it has been stated that she is remote by relationship as compared with the wife.

514. Nor could it be said to avoid this conflict that this text applies in respect of the wealth of the undivided husband, because the same author in order to countermand this reconciliation of

(1) Brihaspati, xxv. 50 and 51. (2) Brihaspati, xxv. 53.

the text says: "When partition is made, even a virtuous woman does not deserve immoveable property."

515. The meaning here implied is, that as the capacity to take the immoveable property for the maintenance of issue depends upon her having issue, the woman who has none, though virtuous, does not deserve the immoveable property even in the case of her husband being divided.

516. "When the husband is dead, she who supports his family shall receive the husband's share; her ownership is, for purposes of gift, mortgage, and sale well known to be life-long." Adamana] mortgage.

517. But even in a divided state, maintenance should be given to the woman.

518. She who is taken for pleasure is named "woman." That woman is called a *stri* who has been purchased for a price for pleasure by a man seeking pleasure, or has been seized or has been once another's. Another's] wife of another.

519. She is denoted by the term *yoshid* (woman) in the text: 'He who takes his *yoshid* (woman) shall pay his debts."(1)

520. Kátyáyana says that such a woman takes no share: "But when her lord is dead, a woman obtains only food and raiment, but she takes the share of the undivided husband for her life." The latter hemistich applies to the wife.

521. Even the wife of the undivided husband takes a share, as the same author says: "The sonless wife, keeping unsullied the bed of her lord, virtuous in her conduct and docile, shall enjoy it until her death; after her, the heirs shall take it."(2)

522. This should be understood to apply where their fathers-in-law are unable to maintain them, as Brihaspati says: "Let him allot annual maintenance or a share in land as he pleases."(3) Vatsaré] every year. The meaning of the word *pinda* is wealth sufficient for maintenance.

523. Nárada states the minimum wealth necessary for bare maintenance: "A virtuous woman, whose husband is dead, shall obtain every year 24 ádhakás and 40 panams."(4) Ádhaká] 192 handfuls of grain. Pana] coins named karshapanas. Some say that it is an eightieth part of what is spoken of as nishka.

524. Kátyáyana says that whatever has been given to woman should be protected (from harm). "But anything given to a woman by the father-in-law out of immoveable property should not be resumed by others after the father-in-law's death."(5)

525. The word *father-in-law* means by implication all those who give maintenance, and the word *immoveable* implies all kinds

(1) Yájñavalkya, ii. 51.
(2) II. Cole. Dig., 595, cccclxxvii.
(3) Not found.
(4) Do.
(5) Found in Brihaspati, xxv. 86.

of wealth; therefore, it should be understood that even money given to women for maintenance should not be taken back by others.

526. Kátyáyana states an exception to the rule: "She who is zealous in doing service to the elders is entitled to enjoy the allotted share; if she does not do service, food and raiment shall be allotted."(1) 'After resuming the allotted share' should be supplied.

527. Here Vishṇu says that life-long maintenance should be given: "Every year 40 panas and 24 ádhakas or 100 karshapanas for life or half that."(2)

528. The same author says that where women do what ought not to be done, their allotted share might be resumed: "The share allotted to women who transgress their limits may be resumed."(3) 'Who transgress their limits' means 'unchaste.'

529. Therefore alone Nárada says: "His women, if they keep their husband's bed inviolate, shall be maintained till their death; but if they do not, they shall not be."(4)

530. As for what is stated by Manu: "Let him follow the same rule in the case of fallen women, but food and raiment should be given them and they should live near the house;"(5) that text lays down what the husband should do.

531. Thus it should be understood that all the texts which enjoin the giving of maintenance to women applies to the case of wives of undivided men and women of divided men.

532. Again, the text: "The sonless wife keeping unsullied the bed of her lord, virtuous in her conduct and docile shall enjoy for her life, and after her, the heirs shall take,"(6) and the text: "When the husband is dead, the wife who supports the family shall obtain her husband's share of immoveables and moveables as also baser metals, grains, liquids and cloths and her ownership in respect of gifts, mortgage and sale is life-long,"(7) both these texts should be understood to apply to the wife having no daughters, from the cogency of the two expressions 'after her the heirs shall take' and 'her ownership is life-long.'

533. Although the gnatis alone take the wealth of the deceased on the death of the woman without issue, still where the wife having daughters dies, that wealth goes only to her daughter's sons, etc.

534. Similarly, here also in order that the father, etc., may not take the wealth on the death of the daughterless wife, and in default of the daughter, etc., it is said that heirs shall take it after her.

535. It is thus established that the use of the word *patni* in all the texts 'the wife, the daughters, etc.,' is to show that the

(1) Found in Brihaspati, xxv. 86.
(2) Not found.
(3) Not found.
(4) Nárada, xiii. 26.
(5) Manu, xi. 189.
(6) II. Cole. Dig., 595, ccccIxxvii.
(7) Vide para., 516.

wife takes all the wealth, immoveable and moveable, of her husband, sonless, divided, not re-united and deceased.

The succession of daughters.

536. Here daughters succeed in default of the wife.

537. The use of the plural number in 'daughters' is, according to Lakshmídhara, to indicate the taking of equal and unequal shares by those of the same class.

538. Accordingly, Kátyáyana also says: "The wife who is not unchaste takes the husband's wealth; in default of her, the daughter if she be unmarried."(1)

539. Brihaspati also says: "The wife takes the wealth of the husband; in default of her, the daughter is declared heir. The daughter, like the son, proceeds from the several limbs of men. How, then, could another man obtain her father's wealth."(2)

540. Here, where there are both married and unmarried daughters, the unmarried daughter alone takes; in her default, the married daughter, as the distinction is declared in the text 'if she be unmarried.'

541. Similarly, where there are both rich and poor daughters, the poor daughter alone takes; in default of her, the rich daughter; as the text of Gautama, "Woman's property goes to daughters unmarried and poor,"(3) applies equally well to the father's wealth.

542. The particle *cha* indicates, they say, that the daughter is on the same footing with the son.

543. As Manu says: "As is oneself, so is one's son. The daughter is equal to the son; how, then, when she, his own self, lives, could another take the wealth"?(4) His own self] equal to the son, who is equal to his own self.

544. But this reasoning does not extend so as to postpone the daughter to both the secondary sons and the wife, but it only serves to make the daughter come in, in default of the aurasa son.

545. True; but it was so stated with the intention that the same reasoning should be inferred with respect to 'the daughter in default of the secondary sons and the wife.'

546. Therefore alone, Nárada, who thought that the daughter should come in in default of both, has stated the order of succession accordingly for the benefit of poor intellects. "In default of the son, the daughter, because she is equally his issue."(5)

547. The meaning is this:—The son and the daughter are both equal in continuing the line, and conferring spiritual benefit on their father.

548. That is to say, the son's son and the daughter's son, the issue of the son and the daughter being not identical in form, it is

(1) Not found.
(2) Brihaspati, xxv. 55 and 56.
(3) Gautama, xxviii. 24.
(4) Manu, ix. 130.
(5) Nárada, xiii. 50.

here meant that they are equal in their deeds. Nor can their equality be possible in the matter of discharging the debts and taking the wealth, for the text says: "By sons and their sons, debts should be discharged"(1); similarly, regarding the paternal grandfather's property, the Smriti says: "There the ownership of both father and son is equal,"(2) thus showing that the son's son is superior; therefore the equality here intended is in the matter of doing acts producing invisible effects and that is the performance of the sráddha, for a text of Vishṇu says: "In the matter of performing sráddha for the ancestors, the daughter's sons are considered as son's sons."(3)

549. Thus the propinquity of the daughter is based upon her conferring spiritual benefits through her issue.

550. But the wife is nearer than the daughter because of her direct participation in Agnihotra, etc., and the spiritual benefits which they produce; it should, therefore, be understood that the word *son* in "in default of the son, the daughter" is intended to include the wife also.

551. If this be so, it may be asked how the daughter could take the wealth in default of the wife, seeing that the father is nearer than the daughter, on the ground that the father himself confers spiritual benefits by performance of sráddhas.

552. Not so; because that is already answered by the text: "How could, when she his own self lives, another take the wealth?" That is to say, though she is remoter than the father in the matter of conferring spiritual benefits, still she is nearer by the connection through the body. Thus, both ways, the daughter alone has precedence.

553. Were it so, there may be room to think that the father should take, in default of the daughter.

554. Not so; even now there is no room for that; because in default of the daughter, the daughter's son is nearer than the father, etc., by his obstructiveness and also on account of the text of Vishṇu: "Where there is no son or son's son, the daughter's sons shall take the property; for, in the performance of sráddhas for the ancestors, daughter's sons are regarded as son's sons."

555. Here Dháresvara, Devasvámi, Devaráthá, Śríkara and others, say that all the texts, which lay down that the wealth goes to the daughter, apply to the appointed daughter alone.

556. The author of the Chandriká condemns their view. The passage of the Chandriká runs thus:—"It should be understood that the view of Dháresvara, Devasvámi and Devaráthá is discarded, being propounded by madness and ignorance of the conclusions of the codes of Law." Conclusion of the codes of Law] his own conclusion.

(1) Yájñavalkya, ii. 50. (2) Yájñavalkya, ii. 121.
(3) Vishnu, xv. 47.

557. It is also condemned by Vijñánesvara; so reads the passage of Mitákshará: "Nor does this apply to the appointed daughter," for in the chapter on "Sons", the appointed daughter and her son have been declared equal to the aurasa son by the text, "Equal to him is the son of the appointed daughter."

558. The view of Dháresvara and others is as follows:— There are only ten sorts of secondary sons with the aurasa son. The son of the appointed daughter and the son self-made have not the nature of a son, but only share the heritage. Therefore, even accepting the two meanings of the compound *putrikásuta*, namely, 'the son of the appointed daughter' and 'the appointed daughter who is the son,' the son of the appointed daughter is equal to the son's son; but the appointed daughter who is the son, being equal to the son and therefore nearer than even the wife, takes the wealth like a son and after her, the wife takes it. The particle *cha* (also) in "The wife, the daughters also" is intended to indicate this rule. The plural number in 'daughters' is for the purpose of including daughters who are not appointed daughters, daughters who have been created appointed daughters, and daughters who have sons of appointed daughters. Therefore, also, because the appointed daughter is not included by 'sons of any kind' in the text of Sangrahakára and others, "the wealth of a man of wealth deceased and having no sons of any kind," it is settled by the text: 'half of it, the son of the appointed daughter,' that the appointed daughter gets half the wealth from the aurasa; therefore also among the three kinds of daughters, one-half of the whole wealth goes to the appointed daughter and the other half to the other two kinds of daughters. This is the view adopted by Dháresvara and others.

559. This is not consistent; the word 'son' in 'the son of the appointed daughter' and 'the appointed daughter being the son' cannot be taken in its secondary sense of merely taking the heritage, because the Smriti declares that son's competency, in default of the aurasa son, to perform the obsequies of the father which ought to be performed by the son. Not being an aurasa son is what is meant by secondary sonship; therefore, being on the same footing with the son, it is laid down that he takes the heritable wealth; no need to say more.

560. Some say that by the particle *eva* (alone) in 'the wife, the daughter also alone,' the daughters of a wife associated in sacrifices are only meant and not those of women taken for pleasure, and that by the particle *cha* (also), those of an ordinary wife.

561. It is not so; if it were so, it would happen that wealth would go to the wives after the daughters, and, thus there would be a conflict with the rule previously stated.

The succession of daughter's sons.

562. From the word *cha* (also) it follows that in default of the daughter, the daughter's son takes the wealth because of his obstructiveness.

563. As Vishṇu says: "When there is neither son nor son's son, the daughter's son takes the wealth, for in the performance of sráddhas for ancestors, daughter's sons are regarded as son's sons." (1)

564. Manu also says: "The maternal grandfather becomes a paternal grandfather by means of that son equal in caste whom his daughter, whether appointed or not, produces; he shall give the pinda and take the wealth." (2)

The succession of parents.

565. In default of the daughter's son, the parents, *i.e.*, the mother and the father, take the wealth.

566. The mother takes the property first, because the word "mother" is first mentioned in the *Dvandva* compound, because the ekasesha compound is an avoidance of the Dvandva, because the word 'mother' is first mentioned in the expansion of the elliptical compound, because the order of import follows the order of the reading, and because the mother is first suggested to the mind in a question of the order of succession to wealth.

567. It is inferred that in default of her, the father takes.

568. Moreover, the father is common to other sons also, but the mother is not common, therefore she is nearer.

569. According to the text: "The nearest among the sapiṇḍas takes his wealth",(3) the mother alone first takes the wealth.

570. Among the mother and the father, the mother being certainly nearer, her taking the wealth is more reasonable; in default of her, the father takes the wealth. This is the view of Vijñánesvara.

571. But the right of the father to take the wealth first is asserted by the author of the Chandriká on account of the text of Vishṇu: "In default of him, it goes to the father and in default of him, it goes to the mother."(4)

572. The view of Vijñánesvara is certainly better than that of the author of the Chandriká, being supported by logical reasons.

573. It should be understood that, by this, the division of the heritable wealth between the parents, stated by Śrikara, is refuted.

The succession of brothers.

574. In default of parents, the brothers take the wealth.

575. As Manu says: "The father shall take the wealth of the sonless man or the brothers alone."(5)

576. As for what has been stated by Dháresvara, "From the text of Manu, 'the mother shall take the wealth of the sonless son, and when the mother is dead, the mother of the father takes

(1) II. Cole. Dig., 548, ccccxxi.
(2) Manu, ix. 136.
(3) Manu, ix. 187.
(4) Vishṇu, xvii. 6 and 7.
(5) Manu, ix. 185.

the wealth,'[1] it follows that, even though the father be alive, the father's mother takes the wealth if the mother be dead; and not the father. Because the wealth, if taken by the father, may go even to sons dissimilar by class, but if taken by the father's mother will go only to sons of equal class, the father's mother alone takes the wealth."

577. Vijnánayogi does not agree to that, because even sons dissimilar by class are declared entitled to take the wealth, by the texts: "They shall take four, three, two and one shares, respectively,"[2] etc.

578. Even among brothers, brothers of the whole blood take first, brothers of the half-blood being removed through their mother.

579. In default of uterine brothers, brothers of the half-blood take the wealth.

The succession of brother's sons.

580. In default of brothers, their sons take the wealth according to their fathers under the text: "The allotment of shares is according to the fathers."[3]

The succession of gotrajas.

581. In default of brother's sons, gotrajas take the wealth; *viz.*, the father's mother, the sapiṇḍas and the samánodakas.

582. Here the father's mother takes the wealth first.

583. The father's mother having to take the wealth after the mother under the text: "If the mother also be dead, the father's mother takes the wealth," the expression 'father's mother takes the wealth' should be understood as simply laying down her right to take the wealth, because there is no room for her coming in between the parents, etc., and the brother's sons whose order is specifically fixed. Therefore, there being nothing to the contrary, the father's mother takes the wealth by preference, in default of the brother's sons. This is the view of Vijñánayogi.

584. In this view the author of the Chandriká does not agree. He says: "The reason stated is that there is no room for her to come in between the parents, etc., and the brother's sons, as their order is definitely fixed. The father's mother takes after the mother on account of the text: 'If the mother also be dead, the father's mother takes the wealth,' and according also to the text of Vishṇu: 'The wealth of a sonless man goes to the wife, and in default of her, to the daughters; in default of them, to the mother and the father; in default of them, to the father's mother, the brothers and the sapiṇḍas'."

585. Here they say that the view of Vijñánayogi alone is sound.

(1) Manu, ix. 217. (2) Yájñavalkya, ii. 125.
(3) Yájñavalkya, ii. 120.

The succession of sapiṇḍas.

586. In default of even the father's mother, men of the same gotra and sapiṇḍas, such as the paternal grandfather and the rest, take the wealth; because the sapiṇḍas of different gotras are denoted by the term *bandhus*.

587. Here, in default of the father's progeny, the paternal grandfather, the paternal uncles and their sons take the wealth in the order mentioned.

588. In default of the paternal grandfather's progeny, the paternal grandfather's mother, the paternal great-grandfather, his sons and their sons also (take the wealth in the order).

589. Thus should be understood the manner of taking the wealth by sapiṇḍas of the same gotra to the seventh degree, according to the text: "The nearest among the sapiṇḍas takes the wealth of the deceased."(1)

590. In default of them, the samánodakas take the wealth. They should be understood to extend to seven degrees beyond the sapiṇḍas, or to include those whose lineage and name are known.

591. As Manu says: "The sapiṇḍa relationship ceases with the seventh degree; but the samánodaka relationship ceases with the fourteenth, or, according to some, when lineage and name cannot be known. Beyond that is said to be the same gotra."(2)

592. It should be understood that the order stated by Sangrahakára in the following text is by this set aside: "In default of such a daughter, the mother shall take the wealth, though the father and the male issue of the rival wife be alive. In the absence of the mother also, the father's mother shall take the wealth, though the father and the male issue by a Kshatriyá wife be alive. In default of even the father's mother, the father shall take the wealth."

593. This order being based upon the theory propounded by Dhâresvara, and being refuted with the aid of arguments by Visvarûpa and others, and being opposed to the rule above stated, is not refuted by us.

594. As for what is stated by the same author: "Where there are brothers both of the full blood and the half-blood, the brothers of the full blood alone are the sharers, though there be brothers of the half-blood," that should be respected, being based on sound knowledge.

The succession of bandhus.

595. The *bandhus* are mentioned in another Smriti in the order of their propinquity. "The sons of one's father's sister, the sons of one's mother's sister, and the sons of one's mother's brother should be known as one's *átma-bandhus*. The sons of one's father's father's sister, the sons of one's father's mother's sister, and the

(1) Manu, ix. 188. (2) A similar passage occurs in Manu, v. 60.

sons of one's father's mother's brother should be known as one's *pitru-bandhus*. The sons of one's mother's father's sister, the sons of one's mother's mother's sister, and the sons of one's mother's mother's brother should be known as *mátru-bandhus*."(1)

596. These have a claim upon the wealth in default of the gotrajas.

597. Even there, one's atma-bandhus take the wealth first by reason of their propinquity. In default of them, the pitru-bandhus take the wealth, and in default of them, the matru-bandhus. This order should be known.

598. Nor could it be urged here that the mother being nearer than the father, the mátru-bandhus take the wealth before the pitru-bandhus. From the text, " of these the mother is more important than the father,"(2) the mother's precedence alone is stated and not that of the mother's bándhus. Therefore we think it sound that the mátru-bandhus should take the wealth only after the pitru-bandhus.

The succession of the preceptor.

599. In default of them, the preceptor.

600. By the text, " But that Bráhmin who teaches the disciple, after investing him with the sacred cord, the Vedas with their rituals and their secret meaning, they call a preceptor "(3), it is indicated that connection through learning is, like that through birth, a source of heirship.

The succession of the disciple.

601. In default of him, the disciple, because the relation through learning exists in the case of the disciple also.

602. Therefore alone Ápastamba says: " In default of the son, he who is the nearest sapiṇḍa; in default of him, the preceptor, and in default of the preceptor, the disciple."(4)

603. By the expression " in default of the son, he who is the nearest sapiṇḍa," in this text, relationship by birth is implied as a source of heirship, and by the expression 'in default of him, the preceptor, etc.,' connection through learning also is implied as a source of heirship.

The succession of the fellow-student.

604. In default of the disciple, the fellow-student takes the wealth.

605. He is called a fellow-student equal to a brother, who obtains from the same preceptor the investiture of the sacred cord, the instruction in the Vedas and the knowledge of their meaning.

(1) This passage is variously attributed to Baudhayana and others.
(2) Not found. (3) Manu, ii. 140; Yájñavalkya i. 34.
(4) Apastamba, ii. 6, 14, 2 & 3.

Succession to the wealth of an heirless Bráhmin.

606. Vijñánesa says, that in default of the fellow-student, any srotriya shall take the wealth, according to the text of Gautama: "Srotriyas shall take the estate of an issueless Bráhmin."(1)

607. Bháruchi and others, however, say that the fellow-student being equal to a brother, the wealth goes to his sons and wives, and in default of his wives, to the srotriya Bráhmin.

608. But Asaháya and others say: "After connection through birth (is exhausted), the wealth goes to the preceptor by virtue of the connection through learning; in default of him, it goes to his son, and in default of him it goes to his wife, also because of her being equal to the mother of the owner, and to the son because of his being equal to the preceptor. In default of both, it goes to the disciple; in default of him, to his son; in default of his son, to his wife; in default of her, to the fellow-student; in default of him, to a srotriya Bráhmin; in default of him, to the mother of a srotriya Bráhmin."

609. As Manu says: "But in default of all these, Bráhmins who are versed in the three Vedas, pure and self-controlled, take the wealth. Thus virtue is not lost."(2)

610. Never shall a king take the wealth of a Bráhmin, according to the text of Manu: "The wealth of a Bráhmin shall never be taken by the king. This is settled."(3)

611. It is said also by Nárada: "If there be no heir at all to the wealth of a Bráhmin at his death, it should be given only to a Bráhmin. Else the king will become a sinner."(4)

Succession to the property of an heirless man of any other caste.

612. As for what has been said by Manu: "But the king shall take (the wealth) of men of other castes in default of an heir,"(5) the meaning of it is that the king shall take the wealth of men of other castes than the Súdrá, *i.e.*, of the Kshatriyá and the Vaisyá in default of heirs down to the fellow-student; and not a Bráhmin.

613. But the wealth of a Súdrá goes to the king in default of heirs down to the brother, according to the text: "The king shall take the wealth of a Súdrá in default of the uterine brother."(6)

Succession to the property of an ascetic.

614. Yájñavalkya, after thus stating the order of succession prominently of heirs through connection by birth of the two connections, *i.e.* by birth and by learning, lays down the order of succession among heirs through the connection by learning: "The heirs of the ascetic, Sanyásin and Brahmachárin are, in order, the preceptor, the disciple and the fellow-student equal to a brother."(7)

(1) Gautama, xxviii. 41.
(2) Manu, ix. 188.
(3) *Ibid*, ix. 189.
(4) Not found.
(5) Manu, ix. 189.
(6) This text is from the Smriti Sangraha.
(7) Yájñavalkya, ii. 137.

615. The takers of the wealth of the ascetic, Sanyásin and Brahmachárin are, in the inverse order, the preceptor, the disciple and the fellow-student equal to a brother.

616. The Brahmachárin is of two kinds:—temporary and perpetual.

617. The wealth of a temporary Brahmachárin, his mother and others alone take.

618. The preceptor takes the wealth of a perpetual Brahmachárin; for in his case the connection through learning is stronger than the connection through birth.

619. The disciples alone take the wealth of a Sanyásin.

620. The Sanyásin is of four kinds:—Kutíchaka, Bahúdaka, Hamsa and Paramahamsa.

621. Of the first three, in default of the preceptor, the disciple takes the wealth.

622. But as the Paramahamsa has no preceptor, the disciple alone takes the wealth.

623. The fellow-student equal to a brother takes the wealth of an ascetic. Ekatirthi] one of the same religious order; Dhárma brátá] one accepted as brother because of being a disciple of the same preceptor.

624. The corresponding term in the original is a compound of two epithets, according to Vijñánesa.

625. The text of Vasishtha: "Those who have entered another order have no shares,"(1) simply denies their deliberate connection with the wealth.

626. It shall be understood that the regulation about the division of the wealth of these persons is reasonable on account of the text: "Let him make a hoard sufficient for a day, a month, six months or a year and throw away what remains in the *ásvayuja* month"(2) regarding the ascetic, and according to the text, "For covering his private parts and his person, let him wear the cloths and take what is necessary for yoga and a pair of sandals"(3) regarding the Sanyásin, seeing also that the perpetual student should have cloths, etc., for protecting his person.

The doctrine of Lakshmídhara.

627. Here, the following is Lakshmídhara's doctrine:—

628. Here, the venerable Lakshmídhara says: The wealth of a person having no issue of any kind, deceased, and not reunited, first goes to the wife; in default of her, to the daughters; in default of them, from the force of the particle *cha*, to the daughters' sons; in default of them, the mother and the father shall take; in default of them, it goes to the brothers; in default of

(1) Vasishtha, xvii. 52. (2) Yájñavalkya, iii, 47.
(3) Not found.

them, to their sons; in default of them, the bandhus, etc., shall take in their order.

629. The wealth first goes to the deceased's own line, the wife, etc; next, to the father's line (*i.e.*) to the paternal uncle, his sons, etc; next, to the ancestor's line to seven degrees; next, to samánodakas; next, to his átma-bandhus; next, to his pitru-bandhus; next, to his mátru-bandhus, and then to others down to the srotriya.

630. This being settled, the wealth goes, in default of the mother, to the daughters, without regard to the question whether the daughters have issue or no.

631. Accordingly, the plural number in 'daughters' becomes significant; therefore alone, the plural 'brothers' is used without regard to the question of their having issue or no; therefore alone also the singular number in 'wife'; if there be both a wife having issue and a wife having none, the wife having issue takes the immoveable property, not the wife having none. Therefore alone, the expression 'his son' shows that where there are brother's sons having issue and having none, he who has issue shall alone take the heritage; similarly, in other cases afterwards mentioned. The use of the plural in 'fellow-students' is for the purpose of including fellow-students under different preceptors, as those under one and the same.

632. Although wealth descending to a daughter is obstructed heritage, it becomes unobstructed heritage when it descends to the daughter while there are daughter's sons.

633. To the daughter's son, who is included by the term *cha*, though not previously named, the ownership simultaneously accrues (with the daughter). This is indicated by the particle *eva*.

634. In the same manner the word 'likewise' in the expression 'brothers likewise' is connected with the term 'their sons' and with the word 'as' understood before 'brothers,' because the words "yat" and "tat" are perpetually associated.

635. Thus the connection of the parts is this; after the devolution of the wealth on the father, his sons, denoted by the word "brothers," acquire an unobstructed right to the wealth; so also when they have sons, the heritage is unobstructed.

636. As for what has been stated by Vijñánayogi: "By virtue of the *ekasesha* compound *pitarau*, the wealth first goes to the mother, and in default of her to the father," it is unsound. The dual number indicating, like the plural number, equality of importance, the ownership of both in the wealth is the same; but Somesvara says, that according to the text 'the child born will be a male when the father's semen exceeds,' and also to the text of Vishṇu, 'Let him take the share which is due to the sower of the seed,' it is right that he should take such a share.

637. That cannot be; if that were so, after the brother's son in the father's line, wealth will devolve on maternal uncles and others because of their having particles of the same body with his mother and not on the paternal grandfather's line. As Bháruchi says in the course of his commentary upon the text of Vishṇu: "The word *bíja* denotes pinda, for here the connection through pinda is alone contemplated; the mother being a sapiṇḍa of the father; they both take the wealth; the father is certainly more important: in default of him the mother."

638. It should he understood that this is also the drift of the text of Vishṇu cited by the author of the Chandriká.

639. The truth here is this: just as in respect of the father's wealth, the heritage is unobstructed, because the son becomes the owner of his father's wealth by the mere fact of his being his son, so also in respect of the daughters, etc.; for if they have sons, their ownership is because of the mere fact of their being her sons. Therefore it is said '*tatsutah*.'

640. If it be urged that the word 'their' stands for the brother of the sonless man and not for a mere brother, and that his son is not, as it seems, entitled to unobstructed heritage.

641. Not so; the term 'brother' being relative, it is inferred that by the term "brother" the brother of a sonless man is meant, but the word "their" cannot refer to the brothers connected with the sonless man; for the meaning of the word does not extend so far.

642. Nor should the debts of the deceased be discharged by his brother's sons even on the ground of their taking the wealth; for if that were so the universality of the rule: "He who takes the wealth should be made to pay the debt"(1) 'would be contradicted. Nor could it be said that that view is acceptable, because that his debts should be discharged is well established in the whole world. For reasons already stated, his debts should be discharged by them, because they take his wealth.

643. Here it must be said that the text of Vishṇu says: "In default of all down to the daughter's sons, the mother and father shall take,"(2) and the text of Yájñavalkya, "The wife, the daughters also etc," says that in default of all down to the daughter's sons included by the term "*also*", the mother and father take the property according to the order of the pinda; whereas in default of the daughter's son, the wealth goes to his son and not to the mother or the father.

644. The correct view here is this;—The drift of the text of Yájñavalkya should be determined, by the force of the words 'also' and 'alone' to be that, even where the heritage is obstructed and where male issue is in existence, the heritage is unobstructed.

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(1) Vishnu, xv. 40. (2) Not found.

645. On the strength of the text: "He who takes the wealth must pay the debts," the payment of the debts is proper, considering his actual taking of the wealth; but his ownership is unobstructed.

646. Therefore, also, the daughters' sons' succession to the wealth is unobstructed and not the daughters'; if the daughters' also were unobstructed, the wealth devolving on the daughter's son would, in default of him, go to the mother and the father, and that is disagreeable to all men of learning. Where wealth devolves on a daughter who has no issue, or on one who was no issue in the shape of an appointed daughter, such wealth after her death would go to her daughters or her relations, and that would not be right.

647. It is accordingly declared: "They (*i.e.* the father, the brother, his son and others of the same gotra), and not relations, take the paternal wealth of a sonless daughter." Relations] maternal uncle, the son of the father's sister, etc.

648. Accordingly, Vishnu also says: "The wealth of a childless woman does not go to the bandhus."(1)

649. The meaning is this:—The wealth of a childless woman is obstructed heritage and goes to the gotrajas and not to the daughters of daughters who are sonless or who have an appointed daughter, because they are not of the same gotra.

650. Therefore alone Hárita, regarding the wife, says: "The sonless wife, who keeps the bed of her lord inviolate, is persevering in good conduct and is docile, shall enjoy till her death, and the heirs shall take after her."(2)

651. Since the words "sonless" and "childless" in the texts, 'the sonless wife, etc'., and 'the wealth of a childless woman, etc.', are accepted to mean the same thing, where the daughter has an appointed daughter, the wealth does not go to the appointed daughter after the daughter.

652. Therefore alone the same author says: "The wealth of a sonless man does not go to the appointed daughter or to his bandhus, but his gotrajas shall take it."(3)

653. Here some say, "the daughter's son" is included by the term "also" in "the wife, the daughters also," etc.," and by the word "alone", the exclusion of others is indicated. Therefore the wealth descendible to the daughter's son goes, in default of him, to the mother and the father alone and not to his son.

654. The wise do not allow of this; it is established by the practice of learned persons that the wealth descendible to the daughter's son, goes, in default of him, to his son alone.

655. Therefore, also, when it goes to a daughter, it devolves on the daughter's son, and if his son be alive, it glances at him.

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(1) Not found.

(2) II. Cole. Dig., 595, ccccIxxvii, where it is quoted as Kátyáyana's.

(3) Not found.

656. This is the important point:—In default of all down to the daughter's son, wealth does not devolve on the daughter's son's son, but goes to the mother and the father alone because of their nearer kinship.

657. If it be said that where there is no daughter and wealth does not devolve on her, the wealth goes to the father and mother alone, because of their succession being nearer than that of the daughter's son,

658. Not so; the daughter's son is even nearer than the mother and the father.

659. Vishṇu says: "When there is neither son nor son's son, the daughter's sons take the wealth, for in the performance of sráddhas for ancestors, daughter's sons are regarded as son's sons."(1)

660. Manu says: "Where a daughter, appointed or not, produces a son of equal class, the maternal grandfather becomes a paternal grandfather by him. He should give the pinda and take the wealth."(2)

661. Here, the expression '*not appointed*' is used by way of illustration, for it has been stated that the son of the appointed daughter takes a half share as being the son, and that his succession is unobstructed; just as the maternal grandfather becomes the paternal grandfather by means of the son of his appointed daughter, so by means of the son of the daughter not appointed also.

662. By this the text also: "One should perform regularly the sráddha for his maternal grandfather"(3) is rejected, because the son of the appointed daughter is mentioned among sons; it is said that the term *putrikáputra* means the grandson of the wife only.

663. In explaining the meaning of these texts of Manu and Vishṇu, learned men contend that the performance by the daughter's son of the sráddha in honor of the maternal grandfather has a cause and that it is not without a cause, like that of the sráddha for the father.

664. That is to say, the performance by the daughter's son of his maternal grandfather's sráddha is conditioned upon his taking the wealth of the maternal grandfather, according to the text of Vishṇu: "He who takes the wealth must perform the sráddha of him whose wealth he takes,"(4) and according also to the text of Vyása: "The sráddha of the maternal grandfather should duly be performed always by the daughter's son taking his wealth as a recompense for the wealth he had taken."

665. As for what has been stated by Pulastya: "Three ancestors, from the maternal grandfather upwards, are declared maternal grandfathers, and the daughter's sons should perform their sráddha as their father's," that should be understood to refer to

(1) II. Cole. Dig., 548, ccccxxi.
(2) Manu, ix. 136.
(3) Not found.
(4) Vishnu, xv. 40.

the maternal grandfather's sráddha performed as a part of the father's.

666. As Pitámaha says: "Where the father's ancestors are worshipped, there the maternal grandfathers also are worshipped. These should be performed without distinction, and the one who makes a difference shall go to hell."

667. Vyása also says: "A person of the regenerate classes should propitiate both the paternal and the maternal ancestors; (thus doing) he discharges the obligation to the manes and obtains the world secured by sacrifices."

668. In the Skanda Purána also: "After performing the sráddha in honor of the three ancestors from the father upwards, he should similarly perform sráddhas for the maternal grandfather to free himself from debt."

669. As for what is stated in the text: "The son of the appointed daughter should regularly perform the sráddha of the maternal grandfather; he has a claim on the wealth of both, and he should perform the obsequies of both."(1)

670. On this, some say: "The son of the appointed daughter is of two kinds:—one is related to the maternal grandfather and the other is related to both the father and the maternal grandfather; by him who is related to the maternal grandfather, the maternal grandfather's sráddha should be performed and by him who is related to both, the obsequies of both should be performed."

671. This view holds when the word *putrikásutah* is construed to mean *the son of the daughter;* for if the word be understood to mean *daughter who is the son,* then he becomes the paternal grandfather of such son; according to the text: "The son that should be born of her shall become my son;"(2) the son of the appointed daughter is related to the maternal grandfather, but the other is related to both.

672. Here we say:—Vishṇu says that the daughter's son is bound to perform his maternal grandfather's sráddha as his own son according to the text: "The performance of the maternal grandfather's sráddha by the daughter's son is not based upon any special reason."(3) The reason consists in the taking of wealth.

673. The daughter's son is bound to perform the maternal grandfather's sráddha as if it were his *nitya* ceremony.

674. Here Bháruchi says: "By the use of the expression 'without a cause' in the text of Vishṇu, it is indirectly stated that the obligation to perform the sráddha does not devolve upon the daughter's son, while sons and others who are nearer and bound to perform the sráddha exist." Here the term "the rest" contemplates the "wife."

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(1) Not found. (2) Manu, ix. 127.
(3) Not found.

675. Although women are not competent to perform pious acts which require the aid of fire and learning for their accomplishment, still from a number of texts such as: "The wife alone shall give him the pinda and take his entire wealth,"(1) their competency to perform those accrues.

676. Accordingly, Gautama also says that the obligation of the daughter's son to perform is the same as that in respect of the *nitya* ceremony. The suffix *vat* in *nityavat* has no meaning.

677. Therefore, the text: "By that son equal in class whom a daughter, whether appointed or not, produces, the maternal grandfather becomes a paternal grandfather; he shall give the pinda and take the wealth,"(2) should be understood to apply to the son of a daughter of the wife denoted by the word *patni* and to the son of the appointed daughter.

678. If it be urged: "The text 'whether appointed or not, etc.,' applies to the son of the appointed daughter by virtue of the term *krita* (appointed) and to the son of a daughter married in the Gándharva form by virtue of the term *akrita* (not appointed). In conformity with the text: 'By that son the maternal grandfather becomes a paternal grandfather,' both these sons become son's sons. In the one case the appointed daughter being a son and her son therefore a son's son, and in the other case the sapiṇḍa relationship and the gotra of the maternal grandfather not being severed by the marriage of the *daughter* in the Gándharva form, her son becomes his son's son; therefore these two alone are bound to perform the maternal grandfather's sráddha as a *nitya* ceremony and not every daughter's son as such,"

679. Not so; the taking of wealth being through the patni according to the text, "shall give the pinda and take the wealth," and women married in the Gándharva form being excluded by the term "patni" denoting association in sacrifices, their daughter's sons have no chance of taking the wealth descending through the wife; again, the term *pautrí* (*i.e.* one who has a son's son), cannot strictly be used in respect of the daughter's son of a woman married in the Gándharva form, he being merely a daughter's son, the use of the word *pautrí* is merely eulogistic, therefore what has been previously stated is alone sound.

680. If it be urged: "The text of Vishṇu: 'He should perform the sráddha of him whose wealth he takes,'(3) and the text also of Vishṇu: 'The obligation of the daughter's son to perform his maternal grandfather's sráddha is without a cause,'(4) conflict with each other,"

681. Not so; here the view of the venerable Bháruchi is in point: "The person bound to perform the sráddha must perform the sráddha by mingling the wealth of him from whom he has taken wealth, being his substitute."

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(1) II. Cole. Dig., 535, ccccviii.
(2) Manu, ix. 136.
(3) Vishṇu, xv. 40.
(4) *Vide* para. 672.

682. The purport is this:—It must be understood that from the context it has been laid down by Bháruchi that where there are many sons or daughter's sons, the Navasráddha and the Shodasasráddha, among the obsequies in honor of the deceased father or maternal grandfather, should be performed by one of them alone and not by all of them together.

683. But Somesvara, following the literal signification of the text and disregarding the force of the context, says that the text 'of him whose wealth he takes, he should perform the sráddhas,' applies only to heirs other than the son and the daughter's son.

684. Even this has been immediately after stated by Vishṇu: "By one alone competent, with wealth contributed (by all), should the Shodasasráddha be performed."(1) The use of the word 'Shodasasráddha', is intended to include Navasráddha also.

685. Accordingly, Gautama also says: "Let one perform the Navasráddha and the Shodasasráddha also with the contributed wealth."(2)

686. The word *cha* (also) includes: "Condiments for the road." From the expression 'contributed wealth' it is learnt that one alone is competent, and not all together, to perform the sráddha.

687. The word *sakti* in the text of Vishṇu denotes competency and power.

688. Thus the meaning is this:—The word *eka* (one) means 'the most important.' The most important is the eldest. If he has power, he alone is competent to perform. Otherwise it is settled that the next is. 'Saktah'] strong of limb. One among the daughter's sons is alone competent to perform.

689. As it appears in this context the text, 'of him whose wealth he takes, &c.,' has been construed by Bháruchi conformably to this view. It must be understood that the force of the context has been set at naught by force of reasoning by Somesvara, whose standpoint is reason.

690. Therefore it must be understood that all the texts which lay down that he who takes the wealth should perform the sráddha, such as 'the sráddha of the maternal grandfather, must necessarily be performed by him who takes the wealth,' &c., refer to Shodasasráddha.

691. On the strength of the views of Somesvara and Bháruchi, this is the meaning of the text: "By the daughter's son, who takes the wealth, should always be duly performed the sráddha of the maternal grandfather for the discharge of the obligation."

692. The word 'Artha' means "benefit," hence "the obligation." 'Arthanishkrítyai' means 'for the discharge of the obligation.'

(1) Not found. (2) Not found.

693. When there are many daughter's sons competing, the one alone who is competent takes the wealth. Having taken the wealth, he should perform with the wealth so taken the Navasráddha and Shodasa sráddha and give the offerings for the road, for where the sons are not at hand, or when there are no sons, and when there is no wife, and when those who are next bound to perform are present, the performance by those more removed is prohibited.

694. Accordingly, Vishṇu also says: "The performance by another when the person bound to perform is present and the performance by persons remote when nearer persons are present are not ordained."(1) The word 'sráddha' should be supplied. Some say that the expression "in the performance of the obsequies" should be supplied.

695. Accordingly, Vyása also says: "One of the regenerate classes should propitiate both the paternal and the maternal ancestors. He will be freed from his debt to the manes and reach the world acquired by sacrifices."(2)

696. 'Freedom from debts' here refers to the debts to the three, *i.e.*, to the Rishis by the life of a bachelor, to the Devas by sacrifices and to the manes by issue. It is also well known that the daughter's son is recognised to be issue of his maternal grandfather, like the son's son and not otherwise.

697. But as the daughter is incompetent to perform acts which are accomplished by fire and learning, and as the daughter's son is alone competent, the maternal grandfather is freed from his debt by securing a daughter's son through his daughter.

698. Hence alone, is a daughter's son distanced by the son's son.

699. Hence alone, is the daughter's son's right to succession not unobstructed like the son's son's, but is indirectly through the daughter.

700. Therefore, as even the daughter's son is somewhat like the son's son, his freedom from debt accrues on the performance of the obsequies of his maternal grandfather like a son.

701. Hence alone, says the Sruti: "It is declared that the daughter is like the son, and the daughter's sons are declared son's sons."(3)

702. This should not be suspected to apply to the appointed daughter, for the suffix *kalpa* (like) will not there be relevant. When the daughter is specially appointed, the appointed daughter is a son certainly, and she cannot be said to be '*like* a son.'

703. Therefore, it is settled that the daughter is a little less than the son and that a daughter's son is a little less than a son's son.

704. As for the text laying down the performance of the sráddha of the maternal grandfather along with that of the paternal

(1) Not found. (2) *Vide* para. 667. (3) See Manu, ix. 130 and 139.

ancestors : "Where the paternal ancestors are worshipped, there the maternal ancestors also should be. It should be performed without any distinction. If a distinction is made, he goes to hell,"(1) this applies alike to maternal grandfathers having a son and to those who have none living.

705. Accordingly, Yájñavalkya also says : "Two in the place of the Visvèdèvas facing the east; three in the place of the manes facing the north, or one at each. The same also in the case of the maternal grandfathers; or the men in the place of the Visvèdèvas already engaged will do for both".(2)

706. The texts "the daughter's son should regularly perform the maternal grandfather's sráddha" and the rest, are certainly consistent with this text.

707. Vijñánesvara and others, however, say that the performance of the maternal grandfather's sráddha along with that of the paternal ancestors is optional.

708. It is thus established that as the daughter's son is nearer than the mother and the father by reason of his conferring invisible and visible benefits, the wealth goes to him alone.

709. Thus this exceedingly profound doctrine of Lakshmídharáchárya has been indicated in a meagre outline.

Succession to the wealth of the re-united.

710. Next Vishṇu states an exception to the rule in 'the wife, the daughters also, &c.' : "The wealth of the re-united does not go to the wife."(3)

711. Here Bháruchi says : "As in a state of non-division, so in a state of re-union, many persons have ownership in the common wealth. Though by the death of one his ownership ceases, the ownership of others remains as it was. So the question, who takes the wealth, does not arise, and in supersession of the rule in 'the wife, the daughters also, &c.,' founded on such a question, the special rule in the case of the re-united is introduced.

712. The drift is this :—"The rule of re-union" means the undergoing of the risk of the burden of contingent loss when, at a time subsequent to partition, co-parceners throw again together their separate wealth, and start in life together as re-united persons, with the special compact that they should share in the profits and losses which may happen to accrue.

713. The order of succession in respect of the re-united is based on reason because, from the reasoning employed, the re-united are to be preferred to the wife and the daughter and also the non-re-united father and the rest included in the order.

714. When wealth divided is mingled with other wealth divided, it is called *samsrishtam*, and he who is owner of such wealth is called *samsrishti*.

(1) This text is Pitamaha's; see para. 666. (2) Yájñavalkya, i. 228.
(3) Not found.

715. The wealth of one so re-united, another re-united shall take ; not the wife and the rest. This is the meaning.

716. All cannot re-unite ; but only the father, the brother and the paternal uncle.

717. Accordingly, Brihaspati also says: "He is called re-united who, after division, lives out of affection in the same place with his father, brother or paternal uncle."(1)

718. Vishṇu also says: "Re-union is only with the father, brother and the paternal uncle, not with others."(2)

719. Here Bháruchi says: "This rule about re-union is optional."

720. The meaning is this :—Re-union may take place at one's option with his paternal uncle, father or brothers, because of the use of the words " out of affection," in ' or with the paternal uncle out of affection.'

721. Therefore alone, this does not fall even within the rule applicable to wealth acquired by joint efforts ; there the rule in " the wife, the daughters also" alone applies on account of the text of Vishṇu : " Where one among those who live by common exertion dies, his wife and the rest alone take his share of the wealth."

722. This is the meaning : the texts of Vishṇu, " re-union is with the paternal uncle, the father, and the brothers alone and not with others," and " the wealth of the re-united does not go to the wife " override the rule in " the wife, the daughters also, etc.,"(3) and restrict re-union to father and the rest alone prohibiting the same with others ; therefore, this rule does not apply to persons living by common exertion.

723. Here Vishṇu states a special rule :—" Of the re-united, he who offers pinda takes the wealth."(4)

724. Here Bháruchi says : In the text " he offers the pinda and takes the wealth, " the giving of the pinda is the cause of the taking of the wealth.

725. The meaning is this :—It is established by all Smritis that the taking of the wealth is the cause of the giving of the pinda, since in the text " of these, the giver of the pinda and the taker of the wealth," the order of the meaning is more important than the order of the words.

726. So, here also, the text is intended to show that in case of re-union, the reason of giving the pinda being more important overrides the reason of the fact of undergoing the risk of the burden of contingent laws ; and not to show that, in truth, the giving of the pinda is the cause of taking the wealth.

727. Therefore, in this context, the rule of re-union and the rule of propinquity both come in, according to their applicability ;

(1) Brihaspati, xxv. 72.
(2) Not found.
(3) Yájñavalkya, ii. 135.
(4) Not found.

therefore, in some instances, the re-united alone takes the wealth under the rule of re-union; in some instances the re-united alone takes the wealth on account of the other rule, and in some cases the not-re-united alone takes the wealth because of the rule of propinquity.

728. Though there are thus three ways, the result of the rule is accomplished, because it is proved that the wife and the rest do not take the property.

729. Therefore, the meaning of the text of Vishṇu is that the wealth of a re-united man having neither son, nor brother, nor father, goes to the paternal uncle alone.

730. Hence alone, Yájñavalkya says: "Of the re-united man, the re-united man."(1)

731. But where one re-unites with his paternal uncle and his uterine brother, the wealth of the re-united man goes to the uterine brother alone and not to the paternal uncle. So Yájñavalkya says: "but of the uterine brother, the uterine brother."(2)

732. The meaning of the text is, that the uterine brother takes the wealth of the re-united uterine brother, and that the paternal uncle, etc., of the re-united man, though re-united, shall not take it, because he alone is competent to offer the pinda to him.

733. Yájñavalkya says that the share of a re-united man should be given to his son born after his death and that it should not be taken. "He shall give and shall take the share of him who is born and of him who is dead."(3)

734. But where brothers of different mothers re-unite, there being no uterine brothers, and where the paternal uncles and the rest are also re-united, there, Yájñavalkya says, the wealth goes to the brothers of the half-blood alone: "But the brother of the half-blood re-united shall not take the wealth of his brother of the half-blood."(4) 'Who is not re-united' should be supplied.

735. As Vishṇu says: Of brothers of the half-blood, the re-united shall take."(5)

736. Here Bháruchi says that the possessive case in 'of half-brothers' has the force of "among", and the meaning is that among brothers of the half-blood, the re-united alone shall take the wealth.

737. The drift is this:—Though brothers of the half-blood, whether re-united or not re-united, are equal in their competency to give the pinda, the competency to give the pinda being equal, because it is independent of the distinction of eldest or youngest, and though, therefore, the rule based upon the competency to give the pinda applies alike to both, still as the rule based upon the undergoing of the risk of the burden of contingent laws

(1) Yájñavalkya, ii. 138.
(2) Do.
(3) Yájñavalkya, ii. 138.
(4) *Ibid*, ii. 149.
(5) Not found.

applies to one of them, he alone takes the wealth; thus there is no inconsistency whatever.

738. It was stated that the wealth of one re-united with the father, brother and the paternal uncle goes not to the father, not to the paternal uncle, but to the brother alone; this being so, the order of devolution of ownership is based merely upon texts and not on reasons. Thus it would conflict with what has been stated. Therefore regarding the precedence of the brother over the father and the rest, even in the case of re-union, reason alone should be urged.

739. We reply: we have already stated that the attempt of divided men to re-unite is preceded by their willingness to undergo the risk of the burden of the contingent laws. It is the attempt of brothers alone to re-unite that is of this kind and not that of the father; for, of the father and son, as the risk of one's losing in consequence of the loss of the other, even in the absence of re-union, is irremediable, their risk is the same whether re-united or not.

740. The Sruti says: "As a son in distress runs after his father, so does the father in distress run after the son." Therefore it is the attempt of brothers alone to re-unite that is preceded by the risk of the burden of contingent laws and not that of the father; thus the precedence of the brother is only reasonable.

741. If this be so, it may be urged that on the death of the father divided from his sons and re-united with his brother, his wealth would go to the re-united brother alone and not to his son.

742. Not so; for the rule based on re-union, like the rule in "the wife, the daughters, etc.," applies to the case of a sonless man.

743. As Nárada says in the chapter on Re-union: "If, among brothers, one dies sonless or turns Sanyásin."(1)

744. Devala also says: "Then the brother of the whole blood shall divide the wealth of the sonless man."(2)

745. Sankha also says: "The wealth of a man going to heaven without sons, goes to the brothers."(3)

746. If it be said that the living son spoken of is a divided son and not a re-united son:

747. We ask, then, is not a son, not re-united, a son? for, the importance of the son is being a son as such, and not by the fact of his being re-united or undivided, because he is described as one's self by the Sruti: "You are born of me from each limb" and because where the son, the self of the owner of the wealth, is in existence, there can be no suspicion at all of another taking his wealth.

748. Just as a divided son takes precedence over the wife and the rest by his sonship alone, so also the son not re-united takes precedence of the re-united brother by his mere sonship; therefore the wealth goes to him alone.

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(1) Nárada, xiii. 25. (2) II. Cole. Dig., 532, ecccix.
(3) II. Cole. Dig., 532, cccciii.

749. If it be asked for what purpose, in the event of the wealth of the father re-united with the paternal uncle and the rest being established to be the son's alone, was the re-union of his father with his brothers and others ?

750. It is replied: the object of re-union was profit during lifetime alone, but not in view to his prospective death; therefore, on the ground that the ownership of him alone in whom it vests on his death under the law is fit to be recognised, the wealth and the undischarged portion of the debts at the death of the re-united father, left after enjoyment thereof during the state of re-union by the paternal uncle and the rest re-united with the father, shall be taken by the sons alone though divided and not re-united. There is thus no conflict.

751. Yájñavalkya states the succession of those not re-united on the rule of propinquity: "Even one not re-united shall take."(1)

752. Bháruchi says that by the word *even* the words "uterine brother" in "but of the uterine brother, the uterine brother" are to be read into this text.

753. But Lakshmídhara says that by the word *even*, the word "uterine brother" alone is included, from the force of the words 'brother of the half-blood' in "not the re-united brother of the half-blood."

754. The meaning is this:—The wealth of a re-united man, the re-united brother of the full blood alone shall take, but a brother of the half-blood, though re-united, shall not take. This is so stated, because though the brother of the whole blood not re-united does not share in the risk of the burden of the contingent laws, he alone is competent to offer the pinda to him.

755. By the very same reasoning, if, among brothers of the full blood, the middlemost dies re-united, then the youngest, though not re-united, being alone competent to perform the obsequies, the re-united eldest, though in existence, does not take the wealth of the middlemost.

756. Here some say that the word 're-united' in the text, "even one not re-united shall take or one re-united," denotes the brother of the full blood. Or that it denotes the owner of the re-united wealth.

757. The view of Vijñánayogi is: "Let the word 're-united,' when the meaning is clearly known, be read into both the sentences; where sentences are different, it is no fault that the same word has different meanings."

758. If it be said that sons re-united with the father take his wealth and that sons not re-united with the father do not take his wealth, just as the son born after partition takes the wealth of the father and not other sons,

(1) Yájñavalkya, ii. 139.

759. Not so; the taking of the father's wealth by a son born after partition is shown by a hundred texts such as: "Amongst divided men, a son born of a woman of equal class shares in the distribution, but a son born after partition shall take the paternal wealth alone,"(1) and "whatever has been acquired by the father divided from his sons, goes all to the son born after partition; those born before it are declared not entitled."(2) Not even one text of this kind showing the right of the re-united son to his father's wealth is found.

760. If it be urged: "If so, it would conflict with what was previously stated, as the ownership of the son born after partition in the father's property would be based upon texts,"

761. Not so; the partition here is based on texts, for partition is based upon texts on the ground that partition should be made by people desirous of the increase of pious acts, according to the texts: "In partition, there is an increase of pious acts,"(3) etc, therefore the ownership of the son born after partition, in the father's wealth, is deduced from reason:

762. That is to say, if, at the time of the son born after partition taking the wealth of the father, others, *i.e.* divided brothers, were to take an equal share themselves, then the share of the son born after partition will be very inconsiderable and thus unequal partition would be the result; if to avoid this fault they all enter into a partition again with the son born after partition, then the original partition instituted by the father would be rendered useless. The brothers should take the re-united share apart, give it to the re-united brother and take the father's wealth only.

763. Therefore that the ownership of re-united and not-re-united sons in the paternal wealth is equal is only reasonable.

764. Intending the very same thing, Bháruchi says: "It is equally legal in the re-united and not-re-united sons to discharge the debts of the father." Though, if the wealth acquired by the father be large, there be a desire through avarice to divide such wealth, still as there is no inclination to divide when there is a loss, because of the unwillingness to share the burden of a loss, there is no partition. But they say that the text of Manu indicates that the son born after partition alone takes the paternal wealth.

765. As Manu says: "Or let him divide it with such of them as were re-united with the father."(4)

766. The meaning of this is:—The son born after partition shall, on his father's death, share with such of the divided sons as were re-united with the father. The implied meaning is that the son born after partition has no partition with his brothers who were not re-united.

767. As for what is stated by Manu, after premising "partition

(1) Yájñavalkya, ii. 122.
(2) Brihaspati, xxv. 19.
(3) Gautama, xxviii. 4.
(4) Manu, ix. 216.

on re-union:" "If among these a share has not been allotted to one, be it the eldest or the youngest, at the partition, or one of them dies, his share shall not lapse; his uterine brothers as also brothers who were re-united and his uterine sisters shall assemble together and share it equally."(1)

768. Vijñánayogi thus explains it. Among these] among brothers re-united, whether the youngest or the eldest or the middlemost has not been given his share at the partition; the *tasi* suffix is applicable to all cases, therefore the word in the original means 'at the time of partition.' Híyeta] has lost his share either by entering another order or by the sin of killing a Bráhmin, etc., or by death; then his share does not lapse; hence it must be taken separately; the meaning is the re-united alone shall not take it. He says how the wealth so separated should be disposed of. That the uterine brothers should divide. The share so separated, the uterine brothers though not re-united (shall take it). Assemble together] even those absent abroad return and assemble. Equally] without greater or less shares. Also those brothers of the half-blood who were re-united and uterine sisters should divide it, *i.e.*, take it in equal shares.

769. The meaning is this:—In the case of the brothers of the half-blood re-united, their undergoing the burden of loss is the cause of their taking shares. In the case of the brothers of the full blood, however, the rule of propinquity, as tested by their competency to give the pinda, is alone the cause of their taking shares. Both causes should be understood to apply in the absence of re-united uterine brothers. But to the sisters at the time of partition of re-united wealth, as at the original partition, something should be given out of affection; but they have no right to share; for there is no re-union with them, and partition is only among those who could re-unite. Thus it is established that brothers of the half-blood re-united and brothers of the full blood not re-united share equally.

770. But Aparárka, the author of the Chandriká and others say: "By the order mentioned in the text of Sankha: 'The wealth of a re-united sonless man goes first to the brothers; in default of them, to the parents; in default of them, to his chaste wife,'(2) the order mentioned in 'the wife, the daughters also, etc.,' is set at naught. Therefore the text: 'The brothers of the whole blood shall divide it, etc.,' lays down the order of succession."

771. Not so; for it was already explained that the order stated by Sankha is founded on reason.

772. From the use of the word 'wife' in the text of Sankha, it should be thought that, at the time of partition of re-united wealth, something should be given to the wife also as to sisters.

773. Therefore the view of Bháruchi and Vijñánayogi alone is sound.

(1) Manu, ix. 211, 212.

(2) II. Cole. Dig., 532, cccciv.

774. Next, something supplementary to all partition is now stated.

775. As Manu says: "When, after all the wealth and debt have been divided according to law, something is discovered, all that should be divided equally."(1)

776. But Kátyáyana states a special rule: "But when they discover what was concealed by one of them, the sons must divide equally with the brothers as the father is not alive."(2)

777. The meaning is, when the father is not alive, the sons must share all wealth discovered equally.

778. As Yájñavalkya says: "The settled law is when, after division, wealth is discovered to have been concealed by one from another, then they shall divide that in equal shares."(3)

779. Here, by the author saying 'equally', partition with deductions is prohibited, and by the author saying 'let them divide,' it is shewn that he who discovers shall not alone take it.

780. Bháruchi, Aparárka, Somesvara and others say that by this text alone it is understood that no blame attaches to heirs taking the common wealth.

781. Vijñánesvara, however, says: "Indeed Manu has shewn that blame attaches to the eldest taking the common wealth and not to others: 'The eldest son, who from avarice cheats the younger brothers, shall not be regarded as the eldest and shall forfeit his share and be also chastised by kings.'(4) This applies not only to the eldest but also to the younger brothers. Accordingly, the Sruti says: 'The sharer who is deprived of his share by another destroys him, and if he do not destroy him he destroys his son or his grandson.'(5) If one does not give another, entitled to share, the share which is his due, then he who is so deprived of his share destroys him who deprives, *i.e.* makes him a sinner. If he destroys not him, he destroys his son or his grandson. Thus sin is declared to attach to the person taking the common wealth without distinction of the eldest, &c".

782. Here the view of Bháruchi and others alone is sound, because the text of Manu and the Sruti regarding the giving of a share only apply to the case of partition of concealed effects.

783. As for what is stated by Kátyáyana: "What is acquired by the divided man alone becomes the wealth of him alone. But what is recovered after being stolen or lost and what has been previously mentioned he shall divide again"(6), the use of the expression 'mentioned previously,' referring to what is said in the text 'that which was wrongfully concealed,' is for the sake of confirmation.

784. The meaning is, that what has been irregularly divided,

(1) Manu, ix. 218.
(2) II. Cole. Dig., 485, ccclxxvii.
(3) Yájñavalkya, ii. 12.
(4) Manu, ix. 213.
(5) Not found.
(6) Do.

wrongfully concealed or taken, lost or obtained with effort shall be divided equally, according to the text: "What has been wrongfully concealed, irregularly divided or subsequently discovered should be divided in equal shares. So says Bhrigu."(1) Irregularly divided] divided unequally in other than the modes allowed by the codes. Lost] lost by deposits, &c., and afterwards recovered. Obtained with effort] debts, &c., due by evil-minded persons.

785. Thus it is a settled rule of the codes of law that an equal division alone should be made by brothers of what was discovered after partition to have been abstracted by others, irregularly divided, lost, concealed by one of themselves or obtained with effort.

Determination of doubts regarding partition.

786. Now Nárada states the mode of determining doubts regarding partition: "Divided brothers may mutually bear witness, stand surety, make gifts and accept what is given, but not the undivided."(2)

787. Brihaspati says: "Those who have separate receipts, disbursements and wealth and lend moneys and trade mutually are, doubtless, divided."(3)

788. Vishṇu also says: "Purchase, sale, gifts, acceptance, suretyship, bearing testimony, partnership, burying treasure, &c., mutually carried on, are causes of partition."(4)

789. This confers power in sale and purchase. Therefore, giving evidence, suretyship, gifts and acceptance should not be mutually done—for among brothers, standing surety, &c., in respect of the divided paternal uncle, &c., should be done by only one of them with the consent of the rest.

790. Accordingly, the Smriti says: "One permitted by others can stand surety."(5)

791. With this intention alone Yájñavalkya says: "Suretyship, debt and giving evidence are not ordained among brothers, husband, wife, and a father, and his sons when undivided."(6) "Mutually" should be supplied.

792. Therefore, alone, he himself says: "When the fact of partition is denied, it should be ascertained from gnátis, kinsmen, witnesses, documents, and also from the houses and lands held separately."(7)

793. When partition is concealed] when it is denied.

Gnátis] kinsmen through the father, *i.e.* the divided paternal uncle, &c.

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(1) Not found.
(2) Nárada, xiii. 39.
(3) Brihaspati, xxv. 92.
(4) Not found.
(5) Anonymous.
(6) Yájñavalkya, ii. 52.
(7) *Ibid*, ii. 150.

Kinsmen] relatives through the mother, *i.e.* the maternal uncle, &c.

Witnesses] of the nature above stated.

Documents] deeds of partition.

It should be ascertained] the fact of partition should be ascertained.

Similarly, from houses and lands separately held. By the particle *cha* (also), separate pursuit of agriculture, etc., and the separate performance of the five great sacrifices and other pious acts are included.

794. Accordingly, Nárada also says : "Where there is a doubt regarding partition among heirs, its determination is by means of relatives, deed of partition and separate transaction of business."(1)

795. Here document, witnesses and the rest are only indications, for they serve in case of a doubt regarding partition as indications of a partition already made; but it will be subsequently shown that efficient causes work a partition not previously made. It will be shown subsequently that the separate performance of religious duties for a period of ten years and similar circumstances included by the word 'also' in "also by lands and houses separately held," are efficient causes of partition.

The effect of indicative marks.

796. If it be urged that in these two texts the indicative marks have the same evidentiary value with documents and witnesses, and that such a statement is inconsistent, because indicative marks are only helps to proof by a process of reasoning and are not themselves convincing as proofs,

797. Not so; in this branch of law, even indicative marks are convincing proofs and not merely helps to proof as in the other seventeen departments of law.

798. That is to say, among brothers entitled to divide, mutual transactions such as debt, suretyship, giving of evidence, gifts, acceptance of gifts and the separate performance of the worship of the manes and the gods have not the same evidentiary value with such indicative marks, as the finding of stolen goods and the bearing of a torchlight. These indicative marks are stated to be on the same footing with witnesses and documents 'in case partition is denied, etc.,' because these are prohibited among the undivided by the texts "but never the undivided, etc.," and therefore necessarily imply a partition; in other departments of law, documents and witnesses alone are direct proofs, and therefore others are only helps to them, but not so here; moreover, it is understood from this text itself that in this respect these indicative marks are recognised as direct proofs even without documents and witnesses.

(1) Nárada, xiii. 36.

799. Therefore, alone, Brihaspati says: "An offence, the ownership of immoveable property and a previous partition among heirs, should be ascertained by inference if there be no witnesses."(1)

800. If there be no witnesses] without documents and witnesses; the use of the word 'witnesses' includes all strong proofs; therefore alone written documents are included.

801. Hence the same author himself subsequently says: "Those by whom these transactions are made with their co-heirs in the world should be regarded as divided even without documents."(2) The word 'documents' includes witnesses also.

802. Here some say that where partition is denied, these indicative marks have equal force with documents and witnesses; so it is that in the commentary on this verse the author of the Chandriká says, "the words *separately or together* are understood after *transact*"; not so; because it is stated that there is some difference between indicative marks and mutual giving of evidence, suretyship, etc.

803. Though, by the use of the word 'witnesses,' the gnátis and other impartial witnesses are included, their separate mention is to show that in cases where partition is denied, they are very important: so says Vijñánesa.

804. Some say that the word 'witnesses' contemplates witnesses who have signed as such.

805. Brihaspati says: "Of those who live in commensality, the worship of the manes, the gods and the Bráhmins will be single, but if they be divided the same will be performed in every house."(3)

806. The author of the Chandriká says: "Thus the separate performance of acts like Visvèdèva, not existing among the undivided, implies partition; therefore in a doubt regarding partition its use as a determining text being reasonable, is unexceptionable."

807. The drift of this is:—the term *pitru* in the text denotes the annual ceremony, because in respect of the sráddhas on the new moon days, etc., one among the undivided is competent to perform them with the consent of the others; by the term *deva* here the Visvèdèva sráddha which supplements it is denoted, not *devayajna* and the rest, for these are enjoined even upon the undivided according to the Smriti: "By the undivided also should be performed the Visvèdèva and other rites." (4)

808. And that applies to them in whose view the nuptial fire is non-secular; but if it be secular it is only subsequent to partition that Agnihotra and other rites should be performed; there, in their case, Visvèdèva and the rest are efficient causes, but in the case of both, the annual ceremony is an efficient cause.

809. Here some say thus: "It has been stated by the author

(1) Brihaspati, xxv. 90.
(2) Found in Nárada, xiii. 40.
(3) Brihaspati, xxv. 6.
(4) Anonymous.

of the Chandriká that in the absence of more important modes of proofs, the indicative marks come in, but that states their importance, because where documents and witnesses exist, a determination with their aid is only natural and not that they are more convincing proofs; where partition is denied, the greater importance of witnesses and documents over the indicative marks should be understood to consist in its being more easily followed, just as it is easier to infer a text of the Vedas as the source of the Smriti than as the source of the custom, though Smriti and custom are equally suggestive of the existence of a corresponding text of the Vedas."

810. Not so; the author of the Chandriká means cause by indicative marks and that is only suggestive, but the efficient causes being superior to documents, etc., are not equal.

The effect of the separate performance of religious rites, etc., for ten years.

811. Here Kátyáyana says: "Brothers who live for ten years, separately performing their religious duties and their transactions, should be regarded as divided from the paternal wealth."(1)

812. The author of the Chandriká says that the word 'brother' includes all heirs, and that the expression 'paternal wealth' includes all heritage.

813. That is not so, because it could be explained that there is no creation of ownership.

814. If it be urged that this would conflict with what was stated in the previous chapter, "when heritage is not enjoyed for ten years, either from pressure of business or inability, the right is certainly extinguished,"

815. Not so; the author of the Chandriká says: "Though there may be no taking possession in truth of the heritage, they are divided according to legal fiction" under the text: 'Land which is enjoyed by another for twenty years, the owner looking on and not speaking, is lost, and other wealth by enjoyment for ten years.'(2)

816. Here the legal fiction is based upon one's *laches*.

817. If it be urged that, as stated by Vijñánayogi in respect of the text: "Land enjoyed by another, etc.," there is no closing of litigation or destruction of its essence, but only the loss of the fruit; here, also, there is only a loss of the fruit, not the destruction of its essence, and not the closing of the litigation.

818. Not so; because the genitive case in "of land" shows the object; and the meaning of the text is that twenty years' enjoyment destroys the land. By the expression that ten years' enjoyment destroys property, the destruction of the essence itself is stated.

819. If it be urged that justice according to truth should be done according to the text: "Rejecting fraud, the king should decide disputes according to facts."(3)

(1) Found in Nárada, xiii. 41. (2) Yájñavalkya, ii. 24.
(3) Yájñavalkya, ii. 19.

820. Not so; the fraud here contemplated is a false one and not a true one, for it is seen that disputes are determined on the strength of true fraud.(a)

821. That is to say, one of the two modes of determining disputes is said to be based on true fraud, according to the text: "Two causes are declared, the course of decision rests upon two things—facts and true fraud, otherwise the power of counteracting justice accorded to the last three (*i.e.*) judicial proceedings, custom, and the king's decree which depends upon the recognition of true fraud according to the text: "Judicial procedure has four feet, justice, judicial poceedings, custom and the king's decree, would be contradicted." What is later mentioned mars the effect of all previously mentioned, if the recognition of true fraud be false, the veracity of the authors of Smritis will suffer.

822. Therefore, alone, the word *chalam* (fraud), in the text: "Let the king, rejecting fraud, etc.," should be understood to refer to fraud which is false.

823. Therefore, alone, has it been stated by the author of the Chandriká and Vijñánayogi in the course of their commentary on the text: "He with whom a portion of the concealed property is found should render the whole, etc.;"(1) that in that case the legal fiction should be recognised.

824. The determination of disputes by means of legal fiction is accepted by Vijñánayogi also who, in commenting upon the text: "In disputes regarding immoveable property, ordeals should be excluded," says that ordeals are not allowed in respect of immoveable property, and who regarding the text: "Land is lost, etc.," says that there is there a loss of produce only. Thus it has been briefly stated.

825. Here, some say, if it be asked how one's separate performance of religious duties and separate transaction of affairs could secure him ownership, seeing that these are not among the sources of ownership as they are distinct in nature from inheritance, purchase, partition, acceptance of gifts and the rest, it is replied that the ownership is produced by the text 'they are divided from the paternal property.'

826. That is to say, it has been already stated that partition is the adjustment of the ownership of many in the common property by fixing their severalty to portions of it, and that is inferred from the text. As in the text: "The land mortgaged is destroyed if it is not redeemed when the principal lent is doubled"(2) it has been stated by Vijñánayogi, that the expressed cessation of ownership in one creates ownership in another.

827. By the author of the Chandriká who states that if there

(1) Not found. (2) Yájñavalkya, ii. 58.

(a) Fraud is classified as true and false. True fraud is one based on true facts. False fraud is based on false allegations of facts.

can be a partition by mere legal fiction, it should be admitted that the generation of ownership is a matter of text.

828. Nor could it be said: "It has been stated by the author of the Chandriká regarding the text 'the pledge shall be lost,' that it is established in the world that a pledge being of the nature of the exchange, on the analogy of the exchange of the gingily seed and the rest, it is, as an exchange, a source of ownership. So it may be said here also that, by another method established in the world, possession due to another's negligence or indifference may become a source of ownership; for this is answered by the text, "Land enjoyed for twenty years, etc."

829. Again, it has been already said that even there, the author of the Chandriká should admit that possession ultimately ends in a gift according to the Smriti or in a sale, as the wealth given in exchange is of the nature of money paid for a sale.

830. It has been said in the course of the commentary on the text: "The pledge shall be lost, etc.," that by ownership being a matter of text is meant that ownership is technical, and it cannot be said here that it is technical, for nothing has been done during these ten years.

831. The meaning of the text of the Chandriká is, 'even though there has been no taking of shares in reality'; in reality] according to actual facts. Taking of share] partition; even in the absence of that, the brothers are divided from the paternal wealth.

832. The drift is this: Ownership is the capacity of alienating at pleasure, and that arises by birth alone.

833. Where the efficient causes, mutual testimony, suretyship, gift, acceptance, sale, purchase, partnership, division of treasure, etc., exist, a partition is immediately created, for these are known to be indicative of partition which they create. Being forbidden to the undivided by the text "the divided brothers shall mutually do and not the undivided," these create and indicate partition. As the followers of Mímámsá hold that the second part of the subject (in a Vidhi) creates a difference in the Sastras and indicate it, such difference being regarded as efficient causes, similarly, it must be understood here also.

834. Here, the doctrine accepted by the author of the Chandriká (*i.e.*) that among brothers ownership is produced is seconded by birth alone. Still, in the absence of efficient causes of partition, it is settled that causes existing for a period of ten years are efficient causes of partition, and a division of ownership is evidently accomplished.

835. Hence, the meaning of the author using the word *also* is that where those indicative marks exist, partition has necessarily taken place.

836. As for what has been stated by the author of the Chand-

riká that the efficiency and the inefficiency of these indicative marks have been stated by the body of the text "within ten years, etc.," and "a new division should be made as ordeals are prohibited in the case of doubt regarding partition," that is intended to show only that even within ten years, the efficiency of these indicative marks is equal to that of witnesses and documents, but that after ten years indicative marks becoming more important, there is no need of documents and witnesses even if they exist.

837. The exclusion of ordeals, however, is a matter of texts, for Vishnu says: "Even in the absence of all, partition should be made again."

838. In the absence of all] in the absence of indicative marks, as documents, etc., and of efficient causes. The term *vibhága* here, as in *Patnívibhága*, only denotes that to incompetent and indigent brothers something should be given according to one's pleasure. So Somesvara and others say.

839. Not so; Bháruchi says: "In the absence of all, proper division alone should be made again, for the ordeal is excluded and the theory of giving something at one's pleasure is inadmissible."

840. This view alone is sound.

841. Some, however, say that the intention of Somesvara and others is this:—Though doubts regarding partition have been removed and though the fact of partition has been established, they have said that something should be given because brothers should be maintained. Thus all is unobjectionable.

842. This doctrine, acceptable to the author of the Chandriká, has been seconded,

843. By the text: "Those brothers also who live for ten years, separately performing religious duties and ceremonies, should be regarded as divided from the paternal wealth"(1); poor brothers in the absence of wealth should make a partition of their religious duties according to the Smriti: "In partition there is increase of religious duties, etc."(2)

844. Therefore it is stated by Bháruchi that those who, without detriment to their father's wealth, separately perform religious duties and ceremonies for ten years are certainly divided, for even a single brother could, without the consent of others, institute a partition of religious duties.

845. It has been stated at the beginning of this chapter that this can be designated by the term "partition." It was stated that in the wealth acquired by one without detriment to the paternal wealth, the heirs have no ownership; hence, even though there be wealth acquired without detriment to the paternal wealth, that being impartible, it should be understood that in such a case partition of religious duties alone takes place; 'from the paternal wealth' is an ablative case, the 'lyap' suffix being dropped.

(1) Nárada, xiii. 41. (2) Gautama, xxviii. 4.

846. The essence of Bháruchi's doctrine here is this:—The ablative case in the text, "if they live for ten years, etc.," being taken for the ablative case where the *lyap* suffix is dropped, the meaning is that where they abandon the paternal wealth and live ten years with their religious duties partitioned, what is acquired by them after that period, such as presents from friends, etc., is alone impartible, and that what was so acquired from friends, etc., within the ten years is certainly divisible. That what was acquired in a state of non-division, such as presents from friends, etc., is partible, is established *a fortiori*.

847. As Vishṇu says: "Wealth not paternal, uterine property, wealth connected with religious duties, that obtained from friends, that obtained by learning, and that unexpectedly acquired is partible within ten years, but after that all this is impartible."

848. Here Bháruchi says: "Not paternal] not acquired by expenditure of the paternal wealth: this qualifies the three next. Uterine property] the property of a woman. Connected with religious duties] acquired by sacrifices, charities, etc. Wealth obtained from friends] received as gift from friends. Wealth obtained by learning] that acquired through learning. Unexpectedly acquired] obtained by accident, such as the hidden treasure and the rest, and that acquired by acceptance of gifts. Of these five kinds of wealth the last three are partible if they have not been already divided by a partition of religious duties, but they are impartible if there has been a partition of religious duties by separate residence for ten years."

849. The drift is this:—The expression 'till ten years lapse' indicates a partition of religious duties.

850. Nor can it be said that the text means that an unequal partition cannot be set aside after nine years from its date in accordance with the text of Bharadvája: "A friendship, an exchange and a partition though equal can be set aside within ten days, but when unequal within nine years," which lays down that an unequal partition can be set aside within nine years; for this text does not refer to that.

851. That is to say, this text appears in a context regarding doubts about partition, and the text also evidently appears to apply to that subject. The fact of living for ten years, separately performing religious duties and transacting business has been laid down as a cause of partition by the text: "Brothers who live for ten years, separately performing religious duties and transacting business should be considered as divided, etc." If this text were intended to lay down an unequal partition, it would be contradictory and the partition indicated by the force of the indicative marks in the expression "should be regarded as divided, etc.," would be contradicted, as these indicative marks do not create ownership in another and as the determination of disputes by following legal

fictions is just. It must, therefore, be acknowledged that in that text the ablative is an ablative with the *lyap* omitted.

852. It is not so; because it has been stated that these indicative marks are efficient causes of partition, because ownership of sons has been established to be by birth alone and because the following of true legal fictions has been declared to be legal.

853. The determination here is this:—In case of doubts regarding partition, determination in some cases should be made by documents, in some by witnesses, in some by gnátis, in some by relatives, in some with these combined; in the absence of all these, by means of the efficient causes. When these and efficient causes exist, determination is naturally by means of the efficient causes; determination can be only by such of the indicative marks as have been continued for ten years and not by others. It has been virtually stated that the determination is by means of those causes alone which have become efficient causes by their continuance for ten years, with this difference that the determination by means of efficient causes is natural, because partition immediately results, but that in the case of indicative marks, when they have become efficient causes by their continuance for ten years. In the absence of all these, seeing that ordeals are not allowed, a fair partition should be made, though partition is established by reasons already stated. Something should be given to the brothers who dispute; thus all is unexceptionable.

854. Here ends the display on the topic called "Partition of Heritage" in the chapter on "Legal Procedure" of the Sarasvati Vilasa, a digest of law compiled by the great King Prataparudradeva.

SMRITI CHANDRIKA.

On Inheritance.

CHAPTER I.

Definition of inheritance and of partition—Disquisition on property—Periods of partition.

1. Manu:—"Thus has been declared to you the law abounding in the purest affection, for the conduct of man and wife, together with the practice of raising up offspring in case of distress. Learn now the law of Inheritance (Dáya-Dharma)."(1)

2. The meaning is—Learn you the law which I propound relating to the wealth called "heritage" (*dáya*).

3. If it be asked what is the wealth called "heritage" (*dáya*), the Nighantukárar (the Lexicographer) says:—"The learned define heritage to be the wealth of a father, which admits of partition."

4. The meaning is, the learned call by the name "*dáya*" (heritage), the wealth descending from the father *and the like*, and which admits of partition.

5. Hence Dháresvara describes "heritage" as follows:—"By 'heritage' is meant that wealth which descends either from the father or from the mother."

6. The particle "*cha*" used in the above text of Dháresvara, shews that property inherited from other relatives, besides the father and the mother, is also included in the term "heritage."

7. The particle "*eva*" (alone) used in the above text, is said to denote property not previously vested. This, however, is not correct, for property devolves from parents on sons and grandsons in virtue of a pre-existent right only.

8. It must therefore be concluded that the Nighantukárar meant to define "heritage" to be "wealth which becomes the property of one or more persons by reason of relation to the owner, and which admits of partition."

9. The law of Inheritance ("Dáya-Dharma") means the rule of partition, for "the duties of man and wife and *partition*" have been enumerated as among the different divisons of this work.

10. Sangrahakára, therefore, says: "By the word *dáya*, wealth descending from the father and that descending from the mother were both meant. The *partition* of such wealth is now explained."

(1) Manu, ix. 103.

11. The meaning of the above passage is:—By the word "*dáya*" (heritage) which forms a part of the compound term "Dáya-Dharma" (law of heritage), wealth descending from the father and the like was meant. The partition of such wealth is explained now, that is, after having expounded the whole law relative to the duties of man and wife, by Manu.

12. If it be asked how it is explained, Manu says: "After the (death of the) father and the mother, the brothers being assembled must divide equally the paternal estate; for they have not power over it while their parents live."(1)

13. Sangrahakára explains the purport of the above text as follows:—

"At what time, how, by whom, and of what sort of heritage, a partition is to be made is (by the above text) explained in conformity with the Sastras."

14. Of what sort of heritage] of estate left by the father, mother, or the like. At what time]; this is plain. How] whether in equal or unequal portions. By whom] whether by the father, brother, sister, or the like. All these points have been explained in the text: "After the death of the father, &c.," para. 12, without violation of the law of Vriddha Manu, and others.

15. By the phrase "after the death of the father," the time when the father's estate is to be divided is indicated, and, by the words, "and the mother" following the above phrase in the text of Manu, para. 12, the time when the mother's estate is to be divided is shewn. Hence, a father's estate may be divided although the mother be living. Likewise, a mother's estate may be divided although the father be alive. It is useless to lay down that both the parents should have died, before a partition of the property of either of them could take place.

16. Accordingly, Sangrahakára: "A partition of the father's wealth may take place even whilst the mother lives, for this reason, that, without her husband, the mother has no independent ownership. A partition of the mother's wealth also may take place in like manner while the father is alive, for, if there be issue, the lord (of the wife) is not the lord of the wife's wealth."

17. Because the father's widow, without her husband, that is, even after the death of her husband, possesses no independent power over his property, and because likewise a husband, while sons are living, possesses no ownership over the property of his wife, therefore the partition of the property of one of them, while the other is living, is proper. Such is the meaning of the above passage. Hence, the passage, by implication, allows the division.

18. This is expressly stated at the conclusion of the text of Manu (para. 12), by the phrase, "They have not power over it while their parents live."

(1) Manu, ix. 140.

19. By saying "they have not power (aneesáh)", it is meant that they have not independent power (asvatantráh). Accordingly, Sankha:—"Sons cannot divide while their father lives, although they have acquired a right to it (father's wealth) from (the time of their birth). They have no power to make such a partition, since they are not their own masters in respect of wealth and religious duties."(1)

20. Although the sons acquire a right by their birth to the paternal estate, still they are not competent to make a partition of it while the father lives, for, during that time (his life-time) they possess no independent power over wealth and religious duties. Hence they cannot divide the property.

21. The absence of independent power over wealth means want of independent power in regard to the receipt and alienation of wealth. Accordingly, Hárita:—"While the father lives, sons are not independent in regard to the receipt, expenditure and 'akshaipa' of wealth."(2) "Receipt" means the enjoyment, and "expenditure", the disbursement, of wealth; "akshepa" fining the slaves and other household servants when they commit faults, in the way of chastisement. "Are not independent"] are not competent to enjoy the wealth at pleasure, irrespective of the will of the father.

22. The absence of independent power in respect of religious duties means, likewise, want of competence for the separate performance of religious sacrifices, and for the separate formation of tanks, &c., for charitable purposes. It must hence be understood that the son must maintain consecrated fire (Agnihotra), and perform other religious acts with the permission of his father and not without it.

23. As for what Devala says:—"When the father is deceased, let the sons divide the father's wealth, for sons have not ownership (asvámyam) while the father is alive and free from defect;"(3) the want of ownership (asvámyam) referred to in this text must be construed as implying simply want of independent power (asvátantryam), for it is a fact established in the world that sons have ownership *by birth* in the property of their father, even where the latter may be free from defect.

24. The objector here says:—"Ownership (svámya) is not a worldly matter, but deducible from the Sastra or Sacred Institutes alone, and that therefore the sense of the above text of Devala is rendered insipid by saying that it is a matter established in the world that sons have ownership by birth. It cannot be alleged that ownership (svámyam) is but nominally said to be deducible from the Sastra, for the reason why it should be considered as deducible from the Sastra has been set forth by Sangrahakára in the following passage:—'One cannot be the owner of a property, simply because he is in possession of it, for does it not occur that possession

(1) II. Cole. Dig., 199, vii. (2) II. Cole. Dig., 199, viii.
(3) II. Cole. Dig., 196, v.

by one of another's property is obtained even by theft or other means? Therefore, ownership is deducible from the Sastra alone and not from mere possession.' The meaning of this passage is that a thing cannot be concluded to be the property of one, simply because it remains in his possession, for, if so, one that obtains possession of another's property by theft or the like, would also have to be called the owner of such property. Therefore, ownership is deducible from the Sastra alone and not from other proof. Again, if one was to be absolutely concluded from mere possession to be the owner of a property, no one could say in the world 'the property of such a man has been wrongfully taken by such a man,' ownership in that case being supposed to attach to any man that is in possession. Besides, if ownership was deducible from any other proof than that of the Sastra, the restrictions which Gautama's text: 'Acceptance is for a Bráhmin an additional mode, conquest for a Kshatriyá, gain for a Vaisyá or Súdrá'(1) impose as to the modes of acquisition with reference to each caste, would become useless, other temporal proof being alone considered to be the criterion of ownership. These two objections have also been noticed by the same author (Sangrahakára) in the following passage: 'If otherwise, it could not be said that such a thing was wrongfully taken by such a man.' What has been, in due order, laid down in the Sastra by the phrase 'acceptance, conquest, trade, servility and the like,' with reference to each caste separately (becomes useless).' So much of the above passage as ends with 'by such a man' exhibits the first objection, and the rest of the passage, with the addition of the words 'becomes useless,' the second objection. Property (svatva) too, like ownership (svámya), must be understood to be deducible from the Sastra alone 'svámya' and 'svatva' being both of the same quality, and when one is proved to be deducible from the Sastras then both are also proved to be so deducible. Sangrahakára, however, adverting to "svatva," too, proceeds to describe how both "svatva,' and "svámya" are inferrible from the Sastra alone. 'A thing cannot be said to be the property (svatva) of a man, simply because he can, at his will, exercise the power of alienation over the same, for alienation of everything is subject to the restrictions of law.' The meaning of this passage is :—One cannot argue, 'I do not say that a thing is the property (svam) of one, because it is seen in his possession, but I say that a thing over which the power of alienation may be exercised by one at will is his property. This cannot be said to be a fallacious reasoning, for a thing unlawfully seized and the like are not to be alienated at will, and cannot, consequently, be called the property of the usurper, and the like.' The alienation of every kind of property, even of that to which one has a legal right, is restricted by law to certain specified purposes, such as the maintenance of priests, servants, and the like. There is hence nothing over which a man can exercise the power of alienation at will. The same is

(1) Gautama, x. 39—42.

laid down by the learned Dháresvara. Since, thus, 'svámyam' and 'svatvam' are both shewn to be the result of the Sastra alone, and since, by the text of the Sastra, 'Sons have not ownership while the father is alive and free from defect, para. 23,' it is settled that sons have not ownership by birth, it is necessary that the text of Sankha, which, among other things, says: 'Although they (sons) have acquired a right to it (father's wealth) from the time of their birth, para. 19,' should be construed differently.

25. We say this here. I do not call that the property of one, over which) *he can* perform the act of alienation at will (yetheshta viniyojyam, but I call that his property which is *capable* of being alienated by him at will (yetheshta viniyogárham).

26. The objector again says: "Since the Sastras contain restrictions as to alienations, and limit the alienations to the maintenance of priests, servants, and the like, it follows that there is nothing (in the world) over which the act of alienation may be performed at will. In the absence of any such act as alienation at will, there could, of course, be nothing that can be called 'capable of being alienated at will.'"

27. This is incorrect. Even if there should be no such act as alienation at will, a thing may be called capable of being alienated at will. Accordingly, Bhavanátha, in his Naya Viveka, says: "That which was acquired by one is to him capable (of being alienated at will." The particle "*cha,*" used in the above passage of Bhavanátha, is intended to denote that, in his (Bhavanátha's) opinion, capability to be alienated at will admits of being defined, just in the same manner as "svatva" or property does. To avoid supposing that if so, a property obtained by theft would be also capable of being alienated at will by the thief, the same author (Bhavanátha) adds: "The modes of acquisition by birth, &c., are the modes recognized by popular practice." The meaning is, that such acquisitions only as are made by birth, purchase, partition, seizure, finding, and the like, are recognized by the world, and they alone confer ownership and not an acquisition made by theft or the like. The particle "*cha,*" used in the above passage of Bhavanátha, is intended to denote the practicability of refuting fallacious reasoning. If it be asked, then, what rule is there to show that a mode of acquisition has been recognized by the world, and another has not, the same author states: "A Smriti or code of law, like grammar and the like, has been framed in order to show what are the rules established in the world from the earliest period." The purport is that such modes of acquisition alone as have, from the beginning, been recognized by the world, are capable of conferring ownership; that they are necessary to be learnt in order to ascertain how property can be acquired in both worldly and religious matters; and that, therefore, with the object of shewing what are the modes of acquisition thus recognized by the world, the Institutes of law (Dharma Smriti) framed by Gautama and others set forth: "An owner is by inheritance, purchase, partition,

seizure, or finding. Acceptance is for a Bráhmin an additional mode, conquest for a Kshatriyá, gain for a Vaisyá or Súdrá,"(1) in the same way as a grammar does show what are the correct expressions in a language as have been long acknowledged in the world.

Inheritance] gain by inheritance; that is, a right which a son or the like acquires by birth over property of the father or the like. Gautama explains in the following passage the origin of the son's title to the paternal estate. "The venerable teachers direct that ownership to wealth is acquired by birth alone."(2) By birth alone] by the very formation of the fœtus in the mother's womb.

Partition. Partition which confers a special or exclusive ownership on the sons, and the like, over the paternal estate.

Seizure is the appropriation of water, grass, wood and the like, not previously appertaining to any other (person as owner).

Finding is the discovery of a hidden treasure, and the like.

If these causes exist, the son, &c., the purchaser, the sharer, the seizer, and the finder, become, respectively, the owners of the property derived from the father, &c., sold, divided, seized, and found. Acceptance is an additional mode of acquisition exclusively appertaining to a Bráhmin. Likewise, for a Kshatriyá, what is obtained by victory is peculiar. Nirvishtam or what is gained in the way of hire by agriculture, and the like, is for a Vaisyá peculiar, and so is for a Súdrá, nirvishtam or what is earned in the form of wages by doing service to the regenerate. Thus, the meaning of the law of Gautama, prescribing the several modes of acquisition, must be understood. What Sangrahakára has stated under the text: "One cannot be the owner of a property simply because he is in possession of it, &c., para. 24," and what the learned Dháresvara has propounded, must all be considered as refuted. The inconsistency of the text of Devala: "Sons have not ownership (svámyam) while the father is alive and free from defect, para. 23," with the passage, para. 18, of Sankha, which declares sons to have acquired a right by birth to their father's estate, must be reconciled only by construing the former text in a manner not strictly literal, (that is, construing the term "asvámyam" as "asvátantryam," as shewn in para. 23). Thus much is sufficient to meet the objections of the opponent.

28. Now, to return to the subject. The use of the phrase "free from defect" in the text of Devala, para. 23, serves to indicate that where a father labours under a defect, the sons become independent of him. It must consequently be understood, that even where a father is alive, if he be disqualified, independence in respect of the receipt and expenditure of the wealth becomes vested in the eldest son, and that other sons are to remain under his control. Hence, Sankha and Likhita: "Should the father be incapable, let the eldest manage the affairs of the family, or with

(1) Gautama, x. 39—42. (2) Not found in Gautama.

his consent, a younger brother (anantara) conversant with business."(1)

29. With his consent] with the consent of the eldest son who then possesses the independent power. Younger brother, (" anantara,") signifies generally a brother of the eldest (whether he be the next younger brother or not) ; competency to transact business and not seniority of birth being here essential. The incapability contemplated by the above text in the father is decay, and the like.

30. Hence, Hárita :—" But if he be decayed, remotely absent, or afflicted with disease, let the eldest son manage the affairs as he pleases (kámam.)"(2)

31. If he be decayed, &c.] ; this must be read " If *while the father lives,* he (the father) be decayed, &c." ; the expression " while the father lives," being understood in the former text, para. 28, and being also required here. By the use of the phrase, " as he pleases (kámam)," in reference to the eldest son, in the above passage, the dependence of the sons on their father is shewn to have then ceased. As such a cessation necessarily creates in the sons a right to divide the paternal estate, a partition can then take place at the will of the sons only. Hence, Sankha :—" Partition of inheritance takes place without the father's wish if he be old, disturbed in intellect, or attacked with lasting disease."(3)

32. Without the father's wish] while the father has no wish that a partition should take place. If he be old] if he be *extremely* old. Disturbed in intellect] deranged in mind.

33. The support of the text hence is, that if the father should lose his independence by old age or the like, the sons are then competent, at their own will, to make a partition of his property even without his will.

34. The phrase " attacked with lasting disease" used in the above text of Sankha, refers also to one influenced by lasting wrath. Hence, Nárada :—" A father who is afflicted with disease or influenced by wrath, or whose mind is engrossed by a beloved object, or who acts otherwise than the law permits, has no power in the distribution of the estate."(4) Here add the words " but the sons have power."

Who acts otherwise than the law permits] who pursues a course prohibited by the Smritis.

35. The same author adds that, in some instances, partition may be made by the sons alone even where the father labours under no defect :—" Let sons equally divide the wealth when the father is dead, or when the mother is past child-bearing, and the sisters are married and when the father's sensual passions are ex-

(1) II. Cole. Dig., 203, xvii.
(2) *Ibid*, 199, vii.
(3) II. Cole. Dig., 203, xvii.
(4) Nárada, xiii. 16.

tinguished and his affection or desire for worldly concerns has ceased."(1)

36. The first hemistich of the above passage apparently refers to a partition taking place *after* the death of the father, and yet the hemistich has been inserted here in order to complete the meaning of the second hemistich. The meaning of the second hemistich is, that where it is ascertained that the father is no longer competent to beget issue, where the daughters have all been married, and where the father's attachment to wealth has become extinct, the wealth is to be shared by the sons alone.

37. Baudháyana confers, in this instance, a power on the father to grant permission to effect the partition. "A partition of the heritage is to take place with the permission of the father."(2)

38. If it be asked, in what case then a partition is to be made by the father himself, Nárada :—Or the father alone, being himself in age, may, at his own instance, divide the estate among his sons."(3) By the words "being himself in age," it would appear that this rule is applicable to the case of a father who has not been deprived of his independence. While the particle "*va*" (alone) used in the text is in itself sufficient to shew that the partition is to be made by the father, the term "himself" (svayam) being also used in the text, shews that it is needless in such a case that the sons should also give their consent. The disjunctive particle "*va*" (or) used in the text and which indicates an alternative, denotes that the father (instead of dividing the property with his sons) may live together with them, and not that partition may be made by any one else besides the father. The alternative indicated by the particle "*va*," is in favour of common abode alone.

39. Vyása, too, accordingly : "Of brothers and the living father, the common abode is enjoined."(4)

40. Even after the death of the father, the common abode of brothers is preferable for the common acquisition of property. Accordingly, Sankha and Likhita :—"Willingly let them live together; by union, they exhibit thrift."(5) This is because there are not, in such a case, the expenses attendant upon the separate residence of the co-heirs.

41. But where the co-heirs become divided, religious duties increase, as observed by Gautama in the passage ; "Religious duties increase in case of partition."(6)

42. If it be asked how they increase, Nárada says :—"The religious duties of unseparated brothers are single. When partition, indeed, has been made, religious duties become separate for each of them."(7)

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(1) Nárada, xiii. 2 and 3.
(2) Baudháyana, ii. 2, 3, 8.
(3) Nárada, xiii. 4.
(4) II. Cole. Dig., 284, cxiii.
(5) *Ibid*, 204, xix.
(6) Gautama, xxviii. 4.
(7) Nárada, xiii. 37.

Religious duties. Duties relating to the worship of manes, deities and Bráhmins.

43. Brihaspati, too: "Among co-heirs living in commensality, *i.e.* with one dressing of food, the worship of manes, deities and Bráhmins takes place in one house only; but, in a family of divided brothers, the above acts are performed in each house separately."(1)

44. The objector says: the religious duties connected with the consecrated fire (Agnihotra), &c., are multiplied in the case of divided brothers only and not in the case of the undivided. Because undivided brothers are wanting in ownership, it is impracticable for them to derive the benefits of consecrated fire, &c., to be kept by each of them. Hence, the benefits of consecrated fire and the like must also be urged as a reason why partition among brothers is preferable. Sangrahakára, too, accordingly says:—"The ownership of sons in the wealth of a father is produced by partition. When ownership is generated, (the right of each to maintain perpetual or consecrated fire and the like) comes in, and the separation is therefore lawful." The words "the right of each to maintain perpetual or consecrated fire" must be understood before the term "comes in" in the above passage.

45. We thus reply. It is improper to say that the ownership of sons in the wealth of the father is produced by partition. It has already been shewn that ownership in sons is generated by birth alone. Undivided brothers also hence possess ownership, and therefore the benefits of consecrated fire, and the like, to be kept by each of them, accrue in their case also. There is consequently no reason to prefer division to non-division *on this ground.*

46. It must, therefore, be understood that the religious duties which Gautama and others have declared, para. 41, as increasing in case of partition, are duties that have already been noticed.

CHAPTER II.

PARTITION.

SECTION I.

Partition during life-time of the father.

1. Sankha and Likhita:—"That partition which is permitted while the father lives must take place, according to law, either openly or privately."(2)

2. The partition during life-time of the father, which is permitted (by law), must be made either *openly*, that is, in the presence of relatives, &c., or *privately*, that is, secretly, according to law, *i.e.* without violation of the law.

(1) Brihaspati, xxv. 6. (2) II. Cole. Dig., 205, xxi.

3. Kátyáyana explains the mode of such partition :—" That partition is declared legal by which the parents and brothers take the entire estate in equal shares."(1)

4. The meaning of this text is that, where, in a partition, the parents and others take in equal portions, but not otherwise, the *whole* estate belonging in common to the family, such a partition, being recognized by law is declared to be one made in conformity with the law.

5. Baudháyana, in order to shew that there is a different law by which a partition assigning a greater share to the eldest brother is declared legal, premises as follows :

6. " The shares of all are equal, it being without distinction laid down in the Sruti, ' Manu distributed his heritage among his sons.' "(2)

7. In the Vedas (Bráhmana) treating of partition during life-time of the father, it is said, " Manu distributed his heritage among his sons." No distinction is observed here as to the shares of the several sons. Under the principle that equality must be the rule where there is nothing laid down to the contrary, it appears from this Sastra alone that the shares of father and sons are all contemplated to be equal.

8. As for the eldest son, the same author (Baudháyana), observing that another Sruti sanctions a greater share being allowed to him, says, " *Let the eldest take one most excellent chattel* (dhana) ; it being declared in the Sruti :—'It is necessary to gratify the eldest son with wealth (dhana).' "(3)

9. Baudháyana, in using the words " *one* most excellent chattel," draws attention to the use of the term " dhana" in the singular number in the Sruti.

10. " Necessary to gratify," means necessary to please.

11. Ápastamba, too, accordingly :—" Having gratified the eldest son with one chattel, let the father, in his life-time, distribute the heritage among his sons in equal shares."(4)

12. The father, when alive, after having satisfied the first or eldest with one superior chattel, deducted out of the common wealth, may make a partition of the remainder by assigning to himself and his sons, inclusive of the eldest, equal shares.

13. Thus, the deduction is made solely on account of seniority in birth, and that deduction must be of one chattel only, the best of all. The residue must be divided in equal portions. This must be considered to be the other mode of legal partition.

14. Of the two modes of partition prescribed, as above shewn, by Kátyáyana, para. 3, and Baudháyana, para. 8, respectively, that which the father wishes to follow, he may adopt ; for, in a parti-

(1) Not found.
(2) Baudháyana, ii. 2, 3.
(3) Baudháyana, ii. 2, 3, 4 and 5.
(4) Apastamba, ii. 6, 13.

tion made by the father, he alone is the lord, and the selection of one or the other mode of partition rests entirely with him.

15. Yájñavalkya, condensing all the above principles, states: "If the father should make a partition, let him separate his sons (from himself) at his pleasure, and either (give) the eldest the best share, or (if he choose) all may be equal sharers."(1)

16. In the second hemistich of the above verse, the two modes of partition above shewn have been indicated in the inverse order. The first hemistich must be understood to declare that the adoption of one or the other of the above two modes is a matter entirely within the discretion of the father *alone*, and not of the sons also. Therefore, whichever mode the father chooses to adopt by his own will, must be assented to by the sons, although they may not like the same.

17. Accordingly, the same author:—"A legal distribution, made by the father among sons separated with greater or less shares, is pronounced valid."(2)

18. Sons other than the eldest are separated with less shares, no greater share being prescribed in their case. The eldest being vested with a right to a superior share is separated with a larger portion of the property; thus, in the case of the eldest and the other sons, the father is at liberty to adopt what is called "a partition with deduction." Nevertheless, the sons are to assent to it, such a mode of partition being sanctioned by law and declared above to be legal.

19. Nárada, too, states the same view: "For such as have been separated by their father with equal, greater, or less allotments of wealth, the distribution actually effected is the legal one, for the father is the lord of all."(3)

20. Where the father gives equal shares to all his sons, the eldest ought not to express dissatisfaction by saying: "One best chattel was not given to me by the father in excess." Likewise, where the father makes unequal partition, the younger brothers should not express dissatisfaction by saying: "Less shares were given to us by the father, while a greater share was assigned to the eldest." For, in either case, the father's will alone renders the partition legal. If it be asked how this can be, the reply is to be found in the text itself which states "the father is the lord of all;" thereby meaning that the father is at liberty to effect any kind of partition he likes.

21. Those that do not abide by a legal partition made are punishable. Accordingly, Brihaspati:—"Sons to whom equal, less, or greater shares have been allotted by their father should respect such a distribution; otherwise, they shall be chastised."(4)

22. To the words "allotted by their father," should be added

(1) Yájñavalkya, ii. 114.
(2) *Ibid*, ii. 116.
(3) Nárada, xiii. 15.
(4) Brihaspati, xxv. 4.

the words "in the manner prescribed by law." For an allotment made in a manner different from that prescribed by law, being illegal, is not fit to be maintained. If, for instance, a father, out of his property, even though it is self-acquired, gives one son a thousand "Nishkas" (gold coins) and dismisses the others with a simple "Kapardika" (shell) at his (father's) own pleasure, such a partition cannot hold good; for property vests only on such a kind of partition as has been recognized by popular practice. It cannot, however, be said here that an unequal partition made at the caprice of the father is also one sanctioned by popular practice, because it is laid down in the Smriti (law): "Let him separate his sons *at his pleasure*," para. 15. The Smriti in question, it must be observed, does not contemplate such a kind of (capricious) partition.

23. Aparárka finally construes the above passage as justifying a mode of partition of this (capricious) nature too, though such a mode is improper in itself. But this construction should be rejected as being opposed to the sound construction above set forth.

24. It is hence settled that unequal distribution made by the father even of his self-acquired property, according to his whims, without regard to the restrictions contained in the Sastras, is not maintainable, where sons are dissatisfied with such distribution.

25. Aparárka again says that the words: "Either give the eldest the best share, para. 15." embrace all the modes of deduction prescribed by Manu in the passage: "The portion deducted for the eldest is the twentieth part of the heritage "(1) and by the other legislators. This construction is also to be rejected, for the words in question apply properly to that special mode of deduction alone, which is ordained in case of partition during life-time of the father by the passage: "Let the eldest take one most excellent chattel, &c." para. 9.

26. Vriddha Brihaspati prescribes a different mode of partition by allowing a greater share to the father. "The father may himself take two shares at a partition made in his life-time."(2) It must be read here "at a partition made *by the father himself* in his life-time."

27. Likewise, Nárada: "Let the father, making a partition, reserve two shares for himself."(3)

28. By saying "making a partition," it is made manifest that two shares may be reserved by the father, only where he, the father, makes the partition, but not where the sons make it during his life-time.

29. Even in the case of partition made by the father, Sankha and Likhita state a distinction in regard to the father reserving two shares for himself: "If there be one son, let himself (the father) reserve two shares."(4)

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(1) Manu, ix. 112.
(2) Brihaspati, xxv. 5.
(3) Nárada, xiii. 12.
(4) II. Cole. Dig., 216, xliv.

30. The word "himself" used in the passage refers to the father in each instance. By the mention of the condition: "If there be one son," the passage must be understood to apply to such a case only as where the father is past the time of begetting, or, in other words, where the father is decayed by age.

31. Hence, Hárita allows an *aged* father a greater share, even where he has got several sons, and thus prescribes a mode of unequal partition between him and his sons. "A father making a complete partition during his life-time, may either go to the forest or enter into the order suitable to an aged man; or, he may divide a small part of his fortune (among his sons) and remain in his house, keeping the greater part of it: should he become indigent, he may take it back from them, and he must also give a portion to sons reduced to indigence."(1)

32. The father, dividing among his sons a small fortune, that is, wealth equal to half of his own portion and keeping to himself a greater part, namely, a double portion, may remain at home. If, when so remaining, he should become indigent and suffer for want of food, &c., he may then take from the sons so much of the wealth acquired by them with the portion allotted to them by himself as would be sufficient for the maintenance of his own family. If, on the other hand, the sons should become indigent and suffer for want of food, &c, the father is then to give them a portion as before.

33. Go to the forest] become a hermit. Order suitable to an aged man] fourth order. These words indicate that the passage is applicable to an *aged* father.

34. Therefore, since a father, in his old age, is dependent on his sons, the purport of the Sruti which says: "It is the same as that of the father running in distress to his son" is reasonable in his case. Likewise, since a son takes but a small portion of his father's wealth, the purport of the Sruti, which says: "It is the same as that of a son running in distress to his father" is reasonable in his case. The author (Hárita), bearing in mind the above Srutis, exhibits the principles of both of them, (namely, that of a father running to his son, and that of a son running to his father), in his passage by the words (para. 31): "Should he become indigent" and so forth. In order to show that the rules contained in his own law in the passages, (para. 31): "He may take it back from them," and, "He must give a portion to sons reduced to indigence," have their origin in Sruti, the author himself quotes concisely, as shewn below, two Srutis bearing a similar import.

35. "Another instance is given here of a Sruti providing at a sacrifice the means of supplying juice to a 'graha' or jar when it is exhausted. That Sruti is: 'The father takes the place of the 'graha' or jar called 'agrayanam,' and the sons take the place of the other grahas or jars. If agrayanam is exhausted or drained,

(1) II. Cole. Dig., 205, xxiii.

the juice is supplied from the other grahas. Likewise, if the other grahas are exhausted or drained, the juice is supplied from the graha agrayanam.' Thus it is explained."

36. Providing at a sacrifice the means of supplying juice to a 'graha' or jar when it is exhausted] making arrangements for feeding a "somagraha" or jar in which the "soma" or asclepias acida is employed, when it is emptied. "Agrayana" is a kind of soma jar. The other grahas are jars other than "agrayanam," such as "aindravayava" (jar representing speech and breath), &c. Exhausted or drained] emptied. The particle "*iti*" has been made use of in the concluding part of the above quotation as indicative of the other Sruti. Thus it is explained]; by using this expression, Hárita means to say that he has explained the substance of the above Sruti by the two sentences: "Should he become indigent, he may take it back from them," and, "He must also give a portion to sons reduced to indigence." (Para. 31.)

37. Here, too, (that is, even in the case contemplated by the text of Hárita: "A father making a complete partition, &c.," para. 31,) an equal partition may be made, if that should be the will of the father, for Kátyáyana who explains the mode of partition during life-time of the father by the text: "That partition is declared legal by which the parents and brothers take the entire estate in equal shares," para. 3, declares the above mode of equal partition to be of universal application.

38. If, therefore, in the instance under contemplation, the father, of his own will, should make an equal partition, then Yájñavalkya says: "If he make the allotments equal, his wives to whom no separate property has been given by the husband or the father-in-law, must be rendered partakers of like portions."(1)

39. The meaning of this text is, that where a father, even where he is old, chooses to render all, inclusive of himself, partakers of equal portions, then he ought to take, on account of *each* of his wives, a share equal to that taken by himself. Hence, the doubt whether the above text of Yájñavalkya is not opposed to a passage of Hárita, which declares: "Partition does not take place *between* a wife and her lord,"(2) is also removed. Thus, everything is rendered right.

40. Where a son, from ability to earn wealth, does not wish for his share of the paternal estate, the father is to separate him from himself by allowing him so much of his portion as he is willing to accept. Accordingly, Yájñavalkya: "The separation of one who is able to support himself and is not desirous of participation may be completed by giving him some trifle."(3)

41. Again, where, during life-time of the father, the sons themselves (without the father's agency) make the partition, equal distribution is the only mode of partition to be adopted in the man-

(1) Yájñavalkya, ii. 115. (2) Found in Ápastamba, ii. 6, 14, 16.
(3) Yájñavalkya, ii. 116.

ner enjoined by the text of Kátyáyana : "That partition is declared legal," &c., para. 3. The reasons for this are,—

1stly. There is no rule in the Sastras prescribing a different mode of partition, where it is made through the agency of sons during life-time of the father.

2ndly. As shewn in the previous chapter when speaking of partition to be made by sons during the life-time of the father, Nárada has enjoined equal partition by the text (Chap. I. para. 35), which, after beginning with "Let sons *equally* divide the wealth," proceeds "when the mother is past child-bearing," and so forth.

42. Thus partition during life-time of the father is explained.

SECTION II.

Partition after the father's death.

1. Hárita, speaking of a father, declares: "If he be dead, the partition of inheritance should be made equally."(1)

2. Where the father is dead, the partition of the family estate which the brothers may make, must be made equally only.

3. Paithínisi, too: "When the paternal heritage is to be divided, the shares shall be equal among the brothers."(2)

4. "Paternal heritage" means wealth forming the subject of inheritance. By the plural of the word "brother" being used in the above text, it cannot be objected to that where the brothers are two in number, there could be no partition, the term "brothers" being used in the text simply to denote the heirs to a common property.

5. Devala, therefore, negatives partition where the heir to the family property is but one. "Heritage is not divisible where there is but one (heir) of the same class."

6. The words "of the same class," are used in the text, in order the shew that, in some countries, partition of heritage does not take place where brothers of both equal and unequal classes exist.

7. Accordingly, Manu: "The son of a Bráhminí, a Kshatriyá, or a Vaisyá by a woman of the Súdrá or servile class, shall not share the inheritance."(3)

8. The principle inculcated by this text is that, although there may be several brothers of the Súdrá and other classes, the son of an unmarried Súdrá is not entitled to heritage. In such a case, the sons of the other classes alone (that is, of the classes not being Súdrá) take the whole estate.

9. Likewise, even where there are several brothers of the same class, one alone will take the whole estate where the others

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(1) Not found. (2) Not found. (3) Manu, ix. 155.

are under disability to participate in the same. Accordingly, Sangrahakára: "The whole estate will be taken by the eldest where the younger brothers are disqualified, and by the middlemost or the youngest, where the eldest is disqualified."

10. The objector here says: "The heritage is not divisible even where the several brothers of the same class are without disqualification, for it has been ordained by Manu, 'The eldest brother alone shall take the patrimony entire and the rest shall live under him as under their father'."(1) "It cannot be said," the objector goes on, "that the above text simply recommends the common abode of brothers, for there is for this purpose a separate text of Manu: 'Either let them thus live together.'(2)"

11. This is true, but the text: "Either let them thus live together" was introduced in order to commend the common abode of brothers of *discretion*. Whereas, the text: "The eldest brother alone shall take the patrimony entire, and so forth," is intended to show that where younger brothers have not attained majority, common abode in the manner therein indicated is imperative until they attain their full age. This text, therefore does not altogether negative partition of heritage among brothers of the same class. There is thus no contradiction.

12. The text of Nárada: "Let the eldest brother, of his free will, support the rest like a father or let a younger brother who is capable, do so. The continuance of the family depends on ability,"(3) is applicable to a case where all the other brothers are under disability.

13. The text of Gautama: "Or the whole may go to the firstborn and he may support the rest as a father,"(4) cannot be said to bear an import similar to that of Manu, for the disjunctive particle "or" used in the text, seems to indicate, as an alternative, the taking of heritage by all such younger brothers as are possessed of discretion. Not only that this text does not really bear an import similar to that of Manu, but it is also directly opposed to Sruti. It is hence to be discarded.

14. Ápastamba, accordingly: "Some hold that the eldest is heir, but this is contrary to law; it being recorded in Sruti that 'Manu distributed the heritage among his sons (without distinction)'."(5)

15. The meaning of the above is that some "Ácháryas" or priests say that, among brothers, the eldest alone takes the patrimony, but this doctrine is directly opposed to Sruti; it being without qualification laid down in that portion of the Veda denominated "Taittiríya Bráhmana," that "Manu distributed his heritage among his sons."

16. The same author (Ápastamba) then expresses his own

(1) Manu, ix. 105.
(2) *Ibid*, ix. 111.
(3) Nárada, xiii. 5.
(4) Gautama, xxviii. 3.
(5) Ápastamba, ii. 6, 14, 6, 10 and 11.

opinion. "All (sons) that are virtuous are entitled to shares."(1) The term "sons" is understood after the term "all" in the above passage.

17. Brihaspati, too: "Sons inherit the paternal estate; the shares of all are equal."(2) "Shares" here means the shares of both assets and debts.

18. Accordingly, Yájñavalkya: "Let sons divide equally the assets and the debts after (the death of) their parents."(3) The debts referred to in this passage are debts contracted by the father, for, as respects debts not contracted by the father, the rule is that they should be discharged at the very time of partition.

19. Accordingly, Kátyáyana:—"A debt contracted by a brother, a paternal uncle, or a mother for the support of the family, must be fully discharged by the co-heirs when partition is made."(4)

20. Nárada says that the debts contracted by the father should also be paid at the time of partition. His passage is: "What remains in the paternal estate after paying off the debts of the father, shall be divided among the brothers. Otherwise, the father continues a debtor."(5)

21. Gautama:—"Out of the paternal estate, Nava Sráddha, or the obsequies of the deceased, must be performed, the heirs being assembled together."(6)

22. Sangrahakára, too: "Partition subsequent to the death of the father is to be made after the performance of Ekoddishta."

23. From all the above texts, it is to be understood that if the paternal wealth be such as to leave a surplus after defraying the expenses of "Nava Sráddha" and discharging the debts contracted by the father, &c., the course prescribed by Nárada, is to be observed. If not, the direction contained in the text of Yájñavalkya, is to be followed. This must be understood.

24. Even in respect of debts contracted by the father, some in their nature are such as should not be discharged at the time of partition out of the paternal estate. It is imperative that they should be divided. Accordingly, Kátyáyana: "The donation for religious purposes, an affectionate gift (prítidattam), and a loan the discharge of which was directed by the father himself, shall, when they are brought to light, be divided. They are not to be paid out of the patrimony."(7)

25. The meaning of this text is that the following three kinds of debts, when they are brought to light, that is, when they are discovered, are to be divided only.

1stly. That which was intended for religious purposes.

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(1) Apastamba, ii. 6, 14.
(2) Brihaspati, xxv. 10.
(3) Yájñavalkya, ii. 117.
(4) II. Cole. Dig., 480, ccclxxi.
(5) Nárada, xiii. 32.
(6) Not found.
(7) II. Cole. Dig., 481, ccclxxiii.

2ndly. That which was promised by the father as a friendly gift.

3rdly. That debt which the father himself has directed that the sons should discharge.

26. If a son, from ability to earn wealth by his own lucrative occupation, does not wish for a share of the wealth left by the father, something must necessarily be given to him for the purpose of obviating any future dispute on the part of his descendants, on account of his share. Manu accordingly says: "If any one of the brothers has a competence from his own occupation and desires not the property, he may be debarred from his share, the rest giving him some trifle for maintenance."(1)

27. Nárada, referring to a particular brother, states that he shall be allowed by the rest of the brothers grain, &c., in excess of his share, on the principle that reward should increase in proportion to exertions. "He who, being actively employed in the affairs of the family, performs the business thereof, shall be supplied by his brothers with food, raiment, and carriage."(2)

28. Thus, equal partition after the father's death has been explained.

CHAPTER III.

Unequal partition.

1. Brihaspati:—"All sons shall share equally the wealth of the father, but of those, he who is endowed with science and good qualities is entitled to receive a greater portion."(3)

2. If sons (outcasts excepted) entitled to inherit the father's estate, be equal in the possession or the destitution of learning or the like, they shall all have equal shares. If, on the contrary, they be unequal in point of learning or the like, such of them as are endowed with learning or the like, will be entitled to receive a great portion either by way of deduction or unequal distribution.

3. Kátyáyana, however, says that a title to receive a greater portion of the inheritance is created in one, not by his being more learned, but by his being more virtuous than the rest. "The learned should award superiority of share in proportion to the likelihood of the wealth acquired in partition being devoted to the performance of religious rites."(4)

4. This text, must, however, be understood to apply to cases where the wealth is considerable.

5. Hence Manu:—"Among brothers equally skilled in performing their several duties, there is no deduction of the best in

(1) Manu, ix. 207.
(2) Nárada, xiii, 35.
(3) Brihaspati, xxv. 10.
(4) Not found.

ten, but some trifle should be given to the eldest as a mark of veneration."(1)

6. "Deduction" is that which is deducted out of the partible estate for the purpose of being given to the eldest, &c. The words "in ten," are used in the text to signify a limited extent of property, sufficient only for maintenance.

"Their several duties" means such duties as are observable with reference to the class to which the parties in each case belong.

7. It is hence to be understood that, in the case of brothers all of whom are equally assiduous in the performance of their several duties, even where there should be considerable wealth, there is neither deduction nor the giving of a trifle as a mark of veneration, the performance of duties being equal (among all). But where the estate is limited, and brothers are unequal in learning and the like, although no deduction can be made by reason of the property being sufficient only for maintenance, yet some trifle alone is to be given to the eldest as a mark of veneration. The conclusion therefore is, that deduction is allowed in partition, only among such brothers as are possessed of considerable wealth, and as are unequal in point of learning, and the like.

8. Manu also details the mode of deduction. "The portion deducted for the eldest is the twentieth part of the heritage, together with the best of all the chattels; for the middlemost, half of that; and for the youngest, a quarter of it."(2)

9. "Eldest" is that brother, who is both senior in birth and superior to all in learning, and the like. He is to get a twentieth part, namely, one part in twenty out of the partible estate, as also one chattel, the best of all. Then, half of that, namely, one part in forty, out of the same estate, with one chattel of a middle sort, is to be set apart for one, who is middlemost both in birth and learning and the like. And a quarter of it *i.e.* one part in eighty out of the same estate together with an inferior chattel, is to be assigned to the youngest, *i.e.* the last in birth, as also in learning, and the like.

10. Manu also prescribes the mode of dividing the residue. "If a deduction be thus made, let equal shares of the residue be allotted."(3)

11. The meaning is, that the property remaining after deduction is to be divided equally.

12. Or, if in the same case, unequal division should be made, Manu says that there could be no deduction. "But if there be no deduction, the shares are to be distributed in this manner: let the eldest have an additional share, and the next born a share and a half, and the younger sons each a share: thus is the law settled."(4)

13. By saying "let the eldest have an additional share," it is meant that he is to have two shares; it being declared by Gau-

(1) Manu, ix. 115.
(2) *Ibid*, ix. 112.
(3) Manu, ix. 116.
(4) *Ibid*, ix. 116.

tama: "Or the first-born shall have two shares."(1) "First-born" means one who is first also in learning, and the like.

14. Hence, Brihaspati:—"The eldest (or he who is pre-eminent) by birth, learning and virtuous qualities, shall receive two shares of the heritage."(2)

15. It should thus be understood that it is not the seniority of birth alone that entitles one to a greater share by way of deduction or unequal distribution, but also superiority in point of learning and the like.

16. This unequal partition does not, however, prevail in the Kali age. Sangrahakára:—"As the duty of an appointment (to raise up seed to another) and as the slaying of a cow for a victim are not in vogue at the present day, so is now partition with deductions."

17. The words "at the present day" and "now" are both used in the above text to denote the present Kali age.

18. Hence in the Puránа: "Second marriage of a married woman, primogeniture, slaying of a cow, procreation of offspring by a brother, and bearing an earthen pot called 'kamandaloo,' these five are forbidden in the Kali age."

19. Primogeniture] superiority of share on account of eminence in birth and learning. Slaying of a cow] slaying in a sacrifice. Bearing an earthen pot called "kamandaloo"] bearing an earthen pot called "kamandaloo" by a "grihasta" or householder.

20. Dhárесvara, too, says as follows on the same subject: "The text 'the portion deducted for the eldest is the twentieth part of the heritage,' is not commented upon: it being greatly abhorred by the world." Add here the words "in the Kali age," for, in Dvápara and other ages, it was capable of being practised, and had not therefore been greatly abhorred.

21. Visvarùpa says: "As the injunction 'Offer to a venerable priest a bull or a large goat,'(3) is unfit of practical observance from its being *opposed* to the practice of the virtuous, so is partition with deductions." This, however, is not right, for, where Smriti (law) and the practice of the virtuous are opposed to each other on any particular point, the inferiority in point of authority attaches only to the practice of the virtuous. This is deducible from the text of Vasishtha: "An act is legal where it is sanctioned by Scripture and Law. In their absence, the practice of the virtuous is the authority."(4)

22. It is true that the offering of a bull, &c., is an act which is not supported by the practice of the virtuous. But, simply from there being no such usage of the virtuous, it is improper to say that it is *opposed* to the usage. It must only be said, as Srikara has

(1) Gautama, xxviii. 9.
(2) Brihaspati, xxv. 9.
(3) Yájñavalkya, i. 109.
(4) Vasishṭha, i. 4 and 5.

done, that "the injunction 'Offer to a venerable priest a bull or a large goat' is not to be observed, such *not being* the usage of the virtuous." But it has not been so said (by Visvarùpa).

23. What Vijñánesvara says: "True, this unequal partition is found in the sacred ordinances, but it must not be practised because it is abhorred by the world," is not also proper, for this too is not founded in truth. The people do not, in reality, abhor partitions attended with deductions or unequal distributions. On the contrary, they seem to be anxious to allow a greater portion to the eldest and other brothers if endowed with learning, good qualities, and virtuous acts.

24. The compilers of Laws, Samboo, Srikara, Devasvámi, and the like, have published volumes even in the present age on the subject of deductions, &c., under the impression that they are, in some instances, allowed by the usage of the virtuous. The learned have, however, decided, with reference to religious books, Puránas, &c., that no such usage of the virtuous exists in the Kali age. We therefore thought that to treat the subject in detail would only swell the work uselessly, and accordingly gave but a hint of the matter.

CHAPTER IV.

Shares allotted to provide for widows and for the nuptials of unmarried daughters. The initiation of uninitiated brothers defrayed out of the joint funds.

1. Vasishṭha :—"Partition of heritage (takes place) among brothers (having waited) until the delivery of such of the women as are childless, (but pregnant)."(1)

2. The word "women" in the text refers to the widows of the father. The word "childless" means having child in the womb. "Until the delivery" means until the child is brought forth. In such a case, partition among brothers who have continued to live together does not take place till after the birth of the issue and its sex is known. The general rule of making partition immediately after the obsequies of the deceased are performed, does not apply to this case.

3. The objector here says that the wording of the passage (para. 1) above quoted, admits of the most natural construction that partition of heritage takes place among brothers and childless widows of the father, after the performance of his obsequies. He asks why should this construction be overlooked?

4. Reply. It is overlooked because the words "until the delivery of such of the women as are childless," convey apparently a meaning inconsistent with such a construction, and because females are incompetent to inherit, consequently, no partition of

(1) Vasishṭha, xvii. 41.

heritage could take place among them. Accordingly, Baudháyana commencing with "A woman is entitled," proceeds "not to the heritage, for it is stated in the Sruti that females and persons deficient in an organ of sense or member are deemed incompetent to inherit."(1)

The particle "*hi*" used in the above passage conveys the sense of "for" or "because."

5. The conclusion hence is that because it is stated in the Sruti that persons deficient in an organ of sense or member, *i.e.* persons who have lost by reason of disease, &c., as well as females, are deemed incompetent to inherit, therefore females are not entitled to heritage; that is, to wealth descending from the owner and admitting of partition.

6. By saying that persons deficient in an organ of sense or member and females are *deemed* incompetent to inherit, it is to be understood that the substance of the Veda (Taittiríyam) to the effect that females and persons wanting in an organ of sense or member are incompetent to inherit, has been recited.

7. Here, however, an objection arises. If females are incompetent to inherit, how, then, did Yájñavalkya say: "Of heirs dividing after death of the father, let the mother also take an equal share."(2) How did Vyása say: "Even childless wives of the father are pronounced equal sharers, and so also are all the paternal grandmothers: they are declared equal to mothers"?(3) and Vishṇu, too: "Mothers receive allotments according to the shares of sons, and so do unmarried daughters"?(4) These passages providing shares for mothers and the like must be incorrect, should the females be incompetent to inherit.

8. The reply is, they are fully correct. With regard to those that are incompetent to inherit, passages directing the allotment to them of heritage (dáya) may be incorrect, but not those which simply direct portions (amsam) to be given to them. *Amsam* signifies a portion and not (a share in) the heritage (dáya). We find it inserted (in law-books) that a portion (amsam) may be given even out of property belonging *in common* to several.

9. Although the mother is disentitled to a partition of the *heritage* from want of ownership in the same, yet, since she possesses an interest in the partible wealth by reason of her being the widow of the deceased father, Yájñavalkya and others must be understood to have permitted her, in compromise of such interest, to take wealth sufficient for her needs by way of a portion.

10. Mitákshará defines the term heritage (dáya) to be "wealth which becomes the property of another solely by reason of relation to the owner." If this definition were correct, the widow's share, from the term "heritage" applying to it, according to the opinion of

(1) Not Found.
(2) Yájñavalkya, ii, 123.
(3) II. Cole. Dig., 243, lxxxiv.
(4) Vishṇu, xviii. 34 and 35.

Mitákshará, would become always divisible. But "heritage," the inherent quality of which is *partibility*, does not apply to the case of the wealth of a husband or wife in the world. Under the definition, however, of "heritage," as given by Mitákshará, the term becomes applicable also to that (portion of the) wealth of the husband of which the widow becomes possessed, she acquiring it solely by reason of her relationship to the husband. But this is opposed to the Sruti, which declares females incompetent to inherit.

11. Our opinion therefore is, that the term "heritage" signifies only that wealth *which is capable of partition* and which becomes the property of another solely by reason of relation to the owner. The wealth which a widow takes is not heritage, since it is not capable of partition. Accordingly, a stridhana derived from the husband is always impartible; division of property between husband and wife being never seen in the world, and Hárita having declared "Partition does not take place between a wife and her lord."(1) It must, therefore, be understood that a mother is entitled not to a partition of heritage in adjustment of a pre-existent right, but simply to take so much of the wealth as she stands in need of.

12. Hence, such a mother alone as is destitute of wealth, and not a mother generally, is declared in Smriti or law to be entitled to receive a share. Smriti:—"A mother, if she be dowerless, shall, in a partition by sons, take an equal share."

13. The meaning is that, during partition by sons, subsequent to the decease of the father, the mother will take an equal share, only where she has no dower, *i.e.* her own separate property.

14. The word "mother" includes a step-mother, it being said by Vishṇu: "*Mothers* receive allotments according to the shares of sons."(2)

15. By the qualifying terms "if she be dowerless," made use of in the text, para. 12, it is inferrible that where a mother, by means of her own separate property, is able to maintain herself and perform such religious duties (requiring for their accomplishment the use of wealth) as are observable by her, she can take no share out of her husband's property. If the separate property of a mother be insufficient for the above purposes, then she, notwithstanding her possession of such property, is to take a share, which, however, is not to be equal to that of a son, but less than that, proportionate to her wants.

16. Accordingly, where the estate forming the subject of partition is large, the mother, though destitute of separate property, is not to take an equal share, but such an inferior share as may be sufficient to meet her own wants. The condition imposed by the expression "if she be dowerless" shews that the taking of a share by the mother is on account of her necessity and not in right of inheritance, as is the case with brothers.

17. By a mother taking not a fixed share, but only so much

(1) Ápastamba, ii. 6, 14, 16. (2) Vishṇu, xviii. 34.

as she stands in need of, the word "equal" used in the text, para. 12, is not rendered useless; for the word serves to debar her, where the partible estate is small, from claiming more than the share of a son, on the score of its being needed by her.

18. Although Vishṇu declares (para. 7) that daughters too are entitled to allotments according to the shares of sons, still it must be understood that this is not in right of inheritance, as in the case of brothers, but simply for the purpose of defraying the expenses of their mariages.

The reasons are,—

1stly. Because they possess no right of inheritance in respect of a property, which, though they have acquired an interest in it by birth, has not become their independent property, (notwithstanding the death of the father) from its being partible not among them, (but among the sons only).

2ndly. Because the adjective "unmarried" is used in the text of Vishṇu, para. 7, before the word "daughters."

19. Since it is stated that a daughter takes a share not in right of inheritance but for the purpose of nuptials, it follows that the above text of Vishṇu is applicable to a case where the estate to be divided is not considerable.

20. Hence, Devala:—"To unmarried daughters, a nuptial portion must be given out of the estate of the father."(1) "Nuptial portion" means funds required for the expense of marriage.

21. Yájñavalkya, after premising "are to be initiated," says: "Sisters with a fourth part of (a brother's) own share being given to them as an allotment."(2)

22. Whatever is the share of one son, one-fourth of such share is to be given to each sister, and thus brothers are to get sisters married.

23. Another Smriti, too says: "Unmarried sisters take their one-fourth share of the wealth from brothers."(3)

24. Each unmarried sister takes them, that is, at a partition after the father's death, wealth equivalent to one-fourth share from brothers.

25. The above passages are applicable to a case where the estate is not inconsiderable.

26. Accordingly, Kátyáyana:—"For the unmarried daughters a quarter is allowed and three parts for the sons, but where the property is small, the portion is considered to be equal."(4)

27. Here, it must be understood that one part is to be given to each of the unmarried daughters and three parts to *each* of the sons.

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(1) II. Cole. Dig., 296, cxxiv.
(2) Yájñavalkya, ii. 124.
(3) Not found.
(4) II. Cole. Dig., 297, cxxvi.

28. The meaning of the fourth or last portion of the above text, para. 26, is that where the estate is small, the share of *each* sister is considered by Vishṇu and others as being equal to that of a son.

29. The principle of the passage: "Where the property is small, the portion is considered to be equal," is by parity of reasoning, applicable also to the case contemplated by the text, para. 7: "Mothers receive allotments according to the shares of sons."

30. Hence, it is understood by implication that where the estate is *not* small, the share is but one-fourth.

31. The phrase "three parts for sons" (occurring in the text cited in para. 26) refers to cases where brothers and sisters are of equal number. Where sisters are of less number, the sons are to have, not three parts, but something more.

32. Manu: "To the maiden sisters, let their brothers give portions out of their own allotments respectively: let each give a fourth part of his own distinct share, and they who refuse to give it shall be degraded."(1)

33. From the words "own respectively" used in the text, the meaning fairly deducible is that whatever may be the shares of the brothers, one-fourth of all such shares is to be given by the brothers to maiden sisters. This text, however, having reference to a case where the number of maiden sisters is greater, is not at variance with the text of the ancient Smriti.

34. It is not, however, necessary in this instance that the brothers, out of their respective shares, should *each* give one-fourth share to *each* of the sisters. How, in such a case, can this text be considered as inconsistent with the ancient one? The inconsistency is totally removed by one-fourth share being allowed (as is inferrible from the text of Manu) to all the daughters *in common* and not to each of them separately.

35. What was given, the maiden daughters are to divide and take in equal shares among them.

36. The text of Vishṇu: "The initiations of unmarried daughters are to be defrayed in proportion to his own wealth"(2) is applicable either to a case where no partition of heritage takes place from there being an only son, or to a case where brothers live in union.

37. The use of the word "daughters" in the foregoing text is also intended to include the case of the unmarried *sons* of the father. Hence, Vyása:—"Brothers whose investiture and other ceremonies have not been performed, are to be initiated in due time from the paternal wealth *alone* by brothers, whose sacraments have already been completed. Unmarried sisters are also to be initiated by their elder brothers according to law."(3)

(1) Manu, ix. 118. (2) Vishṇu, xviii. 35.
(3) II. Cole. Dig., 297, cxxv.

38. Brihaspati, too :—" For younger brothers whose investiture and other ceremonies have not been performed, their elder brothers shall perform them out of the collected wealth of the father."(1)

39. In this text, " brothers " means brothers whose father is dead. " Whose investiture and other ceremonies have not been performed "]; add to these words the phrase " by the father."

40. Therefore, Nárada :—" For those whose initiatory ceremonies have not been regularly performed by the father, those ceremonies must be completed by the brothers out of the patrimony."(2)

41. Where, however, there may be no partimony, the same author adds : " If no wealth of the father exists, the ceremonies of brothers must, without fail, be defrayed by the brothers already initiated, by contributing funds out of their own portions."(3)

42. The ceremonies contemplated by this text commence with Játakarma and end in Upanayana.

43. The word " ceremonies " takes here the above limited sense as the text says " Must *without fail* be defrayed," and as marriage, &c., are not ceremonies that must *without fail* be performed, the law permitting the life of a *perpetual* student (Naishtika Brahmachári).

44. In the case of daughters, however, the word " ceremonies " used in the text, para. 41, denotes marriage, there being no Upanayana for them. If there be no patrimony, the marriage must be performed by the contribution of funds of their brothers' own estate, marriage with females taking the place of Upanayana with males, and, as such, being indispensable.

45. At the time of partition, an unmarried daughter takes also other property, such as ornaments worn by herself and the like. Accordingly, Sankha : " When partition of heritage takes place, the unmarried daughter takes the virgin trinkets, nuptial portion, and stridhana."(4)

46. When brothers divide the paternal estate, the unmarried daughters take the trinkets worn by themselves, the one-fourth share and the like given for the purpose of marriage, as well as the stridhana given by the father, and the like.

47. Baudháyana, too :—" Daughters shall take the mother's trinkets, hereditary or otherwise."(5)

48. " Hereditary "] descended to the mother from the line of her mother. " Or otherwise "] trinkets worn by the mother, gained by any other means. These, the unmarried daughters shall take at a partition of the mother's property.

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(1) Brihaspati, xxv. 21.
(2) Nárada, xiii. 33.
(3) Nârada, xiii. 34.
(4) II. Colc. Dig., 299, cxxix.
(5) Baudháyana, ii, 2, 3, 43.

CHAPTER V.

Exclusion from inheritance.

1. Devala:—"When the father is dead, an impotent man, a leper, a madman, an idiot, a blind man, an outcast, the offspring of an outcast, and a Lingi (a perpetual student, hermit, sectary, or heretic) are not competent to share the heritage."(1) The meaning is, that the impotent and others are not entitled to inheritance on the death of the father.

2. Lingi] a perpetual student (Brahmachárin), hermit, and the like; also sectary or heretic, such as Kshapanaka or Pásupata. The words "when the father is dead" were used in the text, simply to indicate the time of partition. It is not thereby to be supposed that the impotent and others would be entitled to inheritance, if a partition were to be made *during the life-time of the father*.

3. Ápastamba, in the following text declares that they are disqualified for inheritance even when partition during the life-time of the father is made. "A living father should distribute the heritage equally among sons, excluding only such as are impotent, mad, degraded, and the like."(2)

The particle "*cha*" (and the like) used in the text, denotes lepers, idiots, the blind, and so forth. Excluding] divesting of inheritance.

4. Manu enumerates persons excluded from inheritance. "Impotent persons and outcasts are excluded from a share of the heritage, and so are persons born blind or deaf as well as mad men, idiots and the dumb, and those who have lost a sense (nirindriyâh)."(3)

Have lost a sense] are deprived of the sense of smell or the like by disease or other cause.

5. Nárada, too:—"An enemy to his father, an outcast, an impotent person and one formally expelled (apapátrita) take no shares of the inheritance even though they be legitimate: much less if they be sons of the wife by an appointed kinsman."(4)

6. "Formally expelled" means formally degraded; Sankha and Likhita having declared "The heritable right of him who has been formally degraded (apapátri) and his competency to offer oblations of food and libations of water are extinct."(5)

"Apapátri" is one who has been expelled by kinsmen for heinous offences.

7. Vasishṭha, too:—"Those who have entered into another

(1) II. Cole. Dig., 426, cccxxi.
(2) Ápastamba, ii. 6, 14, 1.
(3) Manu, ix. 201.
(4) Nárada, xiii. 21.
(5) II. Cole. Dig., 423, cccxviii.

order are excluded from participation."(1) "Another order" means an order different from that of a householder (grihasta) or married man. Hence it must not be said that incompetency to inherit attaches to that kind of Brahmachári also who is called (Upakurvána), a temporary student. The words "another order" simply refer to that order, the entering into which incapacitates one for the order of "householder."

8. Vishṇu, also:—"The degraded, the impotent, those that are afflicted with incurable disease, as well as such as have lost an organ (of sense or action) are excluded from inheritance."(2)

9. By the adjective "incurable" being placed in the text before the term "disease" *alone*, it would appear that persons afflicted with impotence, loss of limb, &c., that are of a *curable* character, are also disqualified for inheritance. Hence it must be understood that such as appear *at the time of division* to have been afflicted with impotence, &c., are excluded from their shares, and that the exclusion is not confined to those only that *are naturally* (that is, by birth) impotent or the like.

10. Kátyáyana:—"The inheritance is not fit to go to the son of a woman married in irregular order, as also to the son of a woman espoused by her kinsman (sagotra) and to an apostate from a religious order."(3)

11. The son of a woman married in irregular order] the son of a woman married in violation of the rules of caste or birth. The son of a woman espoused by her kinsman] one born of a woman married to her own (sagotra) kinsman. "An apostate from a religious order" is he who gives up the fourth order once entered into by him. "The inheritance is not fit to go" means that these are not worthy of inheritance.

12. Manu, also:—"The son of a woman not duly authorized to beget one as well as one begotten on a woman (already having a son), by the brother of her husband, both these are not entitled to inheritance. They are styled respectively 'járajátaka' and 'kámaja.'"(4)

13. "Járajátaka" is the son begotten on a woman not duly authorized, by one who did not legally marry her. "Kámaja" is the son begotten on a woman (having already a son by her husband) by a brother of the husband. These two are unworthy of inheritance.

14. The conclusion hence is that the son of an adulteress as well as one procreated in violation of the rules of appointment are not entitled to the estate of the "Kshétri" (owner of the soil) or husband of the woman.

15. Brihaspati, too:—"Though born of a woman of equal class, a son destitute of virtue is unworthy of the paternal wealth."(5)

(1) Vasishṭha, xvii. 52.
(2) Vishṇu, xv. 32.
(3) II. Cole. Dig., 439, cccxxxvii.
(4) Manu, ix. 143.
(5) Brihaspati, xxv. 42.

16. "Destitute of virtue" means destitute of such qualities as would render him fit for acts capable of ensuring to the father benefits, visible and invisible.

17. The same author continues: "A son redeems his father from debts to superior and inferior beings. Consequently, there is no use of one who acts otherwise. What can be done with a cow which neither gives milk nor is pregnant? For what purpose was that son born who is neither learned, nor virtuous? A son who is devoid of learning, courage and good purposes, who is destitute of devotion and knowledge, and who is wanting in conduct, *i.e.* who observes not immemorial good customs, is declared similar to urine and excrements."(1)

18. Debts to superior beings" means debts due to sages, deities, and progenitors. "Debts to inferior beings" means debt contracted with a wealthy man. A son devoid of learning, &c. though an aurasa (the issue of the breast "uras") is liable to be discarded in the same manner as urine and excrements are, though produced from one's own body. Such a son therefore is declared equal to urine and excrements.

19. Manu, also:—"All the brothers who are addicted to any vice lose their title to the inheritance."(2)

"Any vice" means any forbidden acts. "Inheritance" means partible estate.

20. All those that are above enumerated as incompetent to inherit are yet entitled to be maintained. Accordingly, Yájñavalkya:—"An impotent person, an outcast and his issue, one lame, a madman, an idiot, a blind man, and a person afflicted with an incurable disease and others (similarly disqualified) must be maintained, excluding them, however, from participation."(3)

21. His issue] the offspring of an outcast. And others] other disqualified persons than those above enumerated. "Must be maintained"] by those that take the heritage; Vishṇu having declared: "They are to be maintained by those that take the heritage."(4)

22. If it be asked how are they to be maintained, Manu says: "But it is fit that a wise man should give all of them food and raiment, without stint, to the best of his power; for he who gives it not shall be deemed an outcast."(5) "Without stint" means for life.

23. Kátyáyana:—"Food and raiment *without stint, i.e.* for life, are considered to be due to him by his kinsmen. But on failure of them, he may take the paternal wealth. The kinsmen shall not be compelled to give the wealth received by them not being his patrimony."(6)

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(1) Brihaspati, 43—45.
(2) Manu, ix. 214.
(3) Yájñavalkya, ii. 140.
(4) Vishṇu, xv. 33.
(5) Manu, ix. 202.
(6) II. Cole. Dig., 439, cccxxxvii.

"His kinsmen" means the kinsmen of him who is excluded from inheritance.

24. The meaning is, that Manu and others consider that food and raiment are to be supplied to him who is excluded from inheritance by those who take his father's wealth. The meaning of the last sentence ("the kinsmen, &c.") of the text is, that where kinsmen have not taken the estate of the father of one who is excluded from inheritance, they are not to be compelled by the king to pay him maintenance.

25. The rule hence settled is, that it is not necessary for kinsmen, who have not taken the patrimony of one excluded from inheritance, to maintain such person.

26. Although maintenance is thus generally provided for all excluded from inheritance, Devala makes an exception to the rule: "For such men *except those degraded*, let food and cloths be provided. The issue of an outcast being also an outcast, is likewise excluded."(1)

27. Hence, Baudháyana: "Let the co-heirs support with food and apparel those who are incapable of business, as well as idiots, blind and impotent persons, those afflicted with disease and calamity and others who are incompetent for the performance of duties, excepting, however, the outcast and his issue."(2)

28. Those who are incapable of business] the dumb and the like. Others who are incompetent for the performance of duties] those who are unfit for acts relating to religion or profession.

29. Vasishtha, by indirect expressions, shews that four classes of persons are not entitled to be maintained. "Those who have assumed another order are excluded from inheritance, as also those that are impotent, mad, or degraded. The impotent and the mad are, however, to be maintained."(3)

30. This text indicates the exclusion of an outcast and of one who has assumed another order from maintenance in virtue of the maxim that: "Of several things, if a quality be ascribed to a few particularly, it is necessarily inferrible that the others are devoid of that quality." As, without entering into a religious order, there can be no apostasy from religious order, it follows, by saying that one who has assumed another order is not entitled to be maintained, that an apostate from a religious order is also likewise excluded from maintenance.

31. The conclusion hence is that maintenance is necessary to be given to all excluded from inheritance, with the exception of the following four—I, an outcast: II, his issue: III, one who has assumed another order, *i.e.* religious order: IV, an apostate from a religious order.

32. It might perhaps be doubted whether or not the sons of

(1) II. Cole. Dig., 426, cccxxi. (2) Baudháyana, ii. 2, 3, 37—40.
(3) Vasishtha, xvii. 52—4.

those that are excluded from inheritance, though themselves possessing no such disability as impotence, &c., are still unworthy of inheriting their grandfather's estate on the ground that they are the offspring of disqualified persons. Devala, in order to clear the doubt, says: "Let the sons of such as have sons take the shares of their parents, if themselves have no similar disability."(1)

33. Sons of such] sons of those that are excluded from inheritance. Similar disability] impotence and the like barring title to inheritance. Shares of their parents] shares of their parents in the wealth of their grandfather.

34. From its being generally mentioned in the foregoing passage "the sons of such," it must not be supposed that the passage authorizes the son of an outcast also to inherit the wealth of his grandfather. He is clearly excluded by the words "if themselves have no similar disability" in the passage, the male issue of an outcast being also an outcast.

35. Vasishtha, accordingly: "One (not being a female) born to an outcast is declared to be an outcast. As for the female issue of an outcast, she is a 'paragámi,' or one that enters (as do females in general) a different family by reason of marriage."(2)

36. Like the son of an outcast, the son of one produced by a woman called "pratiloma" is disqualified to inherit his grandfather's estate, there being in his case disability fatal to inheritance. Accordingly, Vishnu: "The legitimate sons of these are sharers, but not the sons of a degraded man born subsequently to the commission of the act which caused his degradation, nor those who are produced by a 'pratiloma' connection: their sons do not participate even in the property left by the paternal grandfather."(3)

37. "Born immediately (anantaram)" means born at any time after the occurrence of the act which was the cause of degradation. It is not necessary here that the birth should have occurred *immediately after* the act as the term "anantaram" goes literally to signify. The sons so born are not therefore entitled to inheritance.

38. In like manner, incapacity to inherit the grandfather's estate attaches also to the sons of an apostate from a religious order as well as to such other sons as are, by reason of defects, disqualified to inherit.

39. As to the kshetraja or son of the wife procreated by a kinsman authorized to raise up issue to the husband, Yájñavalkya says: "But their sons (the sons of the impotent and the like), whether legitimate or the wife by a kinsman (kshetraja), are entitled to allotments, if free from similar defects."(4)

40. This passage must be understood as applicable to Dvápara and other ages; a son of the class of kshetraja being prohibited in the Kali age.

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(1) II. Cole. Dig., 426, cccxxi.
(2) Not found.
(3) Vishnu, xv. 34—37.
(4) Yájñavalkya, ii. 141.

41. As for disqualified legitimate sons, &c., of disqualified persons, that they ought to be maintained has been shewn by this very author in the passage: "A blind man and a person afflicted with incurable disease and others similarly disqualified must be maintained, excluding them, however, from participation."(1) It is not therefore here repeated.

42. The following, however, is a passage of the same author on a subject not already noticed. "Their daughters must be maintained likewise until they are provided with husbands. Their childless wives conducting themselves aright must be supported; but such as are unchaste should be expelled; and so indeed should those be who are perverse."(2)

43. Their daughters] unmarried female children of those excluded from inheritance. Must be maintained] by the persons that take the wealth of the father of those excluded from inheritance. In order to avoid the supposition that they are to be maintained *for life* like those excluded from inheritance, it has been said: "until they are provided with husbands," that is, until they are disposed of in marriage. Their childless wives, that is, the legitimate wives of those excluded from inheritance, being destitute of male issue and behaving always virtuously, are to be maintained by those who take the estate of the father of the disqualified persons in the same manner as the disqualified persons themselves are maintained. Such wives, however, as are unchaste or perverse towards the person maintaining them, are to be turned out of the house. Unchaste wives who have been expelled are not to be maintained, but those that are perverse are to be maintained though they have been expelled.

44. Thus it has been explained who are persons incompetent to inherit.

CHAPTER VI.

On property liable to partition.

1. Kátyáyana: "What belonged to the grandfather or to the father and anything else (appertaining to the co-heirs having been) acquired by themselves must all be divided at a partition among heirs."(3)

2. Acquired by themselves] acquired with the use of the paternal or other common wealth; for an acquisition without the use of such wealth is impartible.

3. There are thus three kinds of property that are wholly partible. But this is only where there may be no debts contracted by the grandfather and the like. Where there exist such debts, the whole property is not to be divided, but only so much of it as remains after discharging the debts.

(1) Yájñavalkya, ii. 140. (2) Yájñavalkya, ii. 141 and 142.
(3) II. Cole. Dig., 478, cccIxviii.

4. The same author accordingly says: "After paying the debts and also affectionate gifts (prítipradánam), let the residue be divided."(1)

"Affectionate gifts"] presents made through affection.

5. By saying that the residue is to be divided, it is indicated that the passage contemplates a case where the estate is large. Where the estate is not large, it has already been shewn in that part of this work which treats of partition after the father's decease, that debts are to be divided in the same manner as effects.

6. In order to ascertain properly at the time of partition the extent of debts and also that of affectionate gifts promised, the same author (Kátyáyana) says that they must be examined by the heirs with the kinsmen. "Debts of this kind must be examined at a partition in company with the kinsmen."(2)

7. The same author further states that discovery must be made of effects which are, in their nature, such as can be concealed. "Thus Bhrigu has declared that household utensils, beasts of burden, and milch cattle, ornaments and workmen, must be divided when discovered among the heirs, and that if effects are suspected to be hidden, a discovery must be made by the Kosa(a) mode of ordeal."(3)

8. Workmen] slaves and other menials. Suspected] where there is suspicion that the property has been concealed. The meaning of the passage is that, in such a case, Bhrigu ordains that mode of ordeal which is called "Kosa."

9. Again, the same author says: "Pratyaya (ordeal) is ordained where there is suspicion of concealment of property."

10. The term "Pratyaya" is here used in a limited sense, signifying the same kind of ordeal (Kosa) as has been already noticed (para. 7).

11. Brihaspati, too, alludes to Kosa alone as the mode of ordeal to be observed. "Household utensils, beasts of burthen and milch cattle, ornaments and workmen must be divided when discovered. Where effects are suspected to be hidden, a discovery by Kosa is ordained."(4)

12. The term "Kosa" used in the above passage must not be said to refer to ordeals of all sorts (but only to that kind of ordeal which is styled "Kosa").

13. In Kátyáyana's work on Partition, it is said: "Should there be suspicion of want of faith in the distribution of family as-

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(1) II. Cole. Dig., 479, ccclxix.
(2) *Ibid.*
(3) II. Cole. Dig., 484, ccclxxv.
(4) Brihaspati, xxv. 98.

(a) *Kosa.* This is one of the ordeals prescribed by the Hindu Sastras. An idol or some other object of worship is immersed in water and the suspected person is made to drink of such water, his guilt or innocence being supposed to be established by the visible effects produced on the person by drinking of the water.

sets, instead of weighing a host of evidentiary matters, let the Kosa ordeal *alone* be undergone."(1)

14. As the term "Kosa" has here apparently a limited senses it must be understood that the term has been used in the same sense in the text of the same author (Kátyáyana) quoted in para. 7. It hence follows that the same sense attaches to the term "Kosa" used in the passage of Brihaspati above quoted, para. 11.

15. Thus property liable to partition has been explained.

CHAPTER VII.

On property not liable to partition.

1. Vyása:—"Wealth gained by science, or earned by valour or received from affectionate kindred, belongs at the time of partition to him (who acquired it) and shall not be claimed by the co-heirs."(2)

2. By the words "gained by science," it is not to be understood that wealth gained by learning generally is impartible, but the learning should have been acquired in the peculiar mode described by Kátyáyana in the passage: "Wealth gained through learning, which was acquired from a stranger while receiving a foreign maintenance, is termed "acquisition through learning."(3)

3. The words "stranger" and "foreign," used in the above passage, refer to one not being a member of the undivided family. The word "maintenance" implies wealth in general required for subsistence.

4. Wealth, the result of science acquired as above stated, is gained under different circumstances. The wealth acquired assumes also different forms according to the circumstances under which the acquisition in each instance has been made. That all such acquisitions are impartible has been concisely stated by Vyása in the general words "wealth gained by *science*." Kátyáyana, however, details them as follows:—

I.—"What is gained by proving superior learning after a prize has been offered, must be considered as acquired through learning and is not included in partition among co-heirs.

II.—What has been obtained from a pupil or by officiating as a priest or for answering a question or for determining a point in dispute or for the display of knowledge or by (success in) disputation or for reciting the Vedas with transcendent ability, the sages have declared to be the gains of learning and not subject to partition.

III.—What is gained through skill by winning from another a stake at play, Brihaspati ordains the gains of learning not liable to partition.

(1) Not found. (2) II. Cole. Dig., 444, cccxlvi.
(3) II. Cole. Dig., 444 cccxlvii.

IV.—What is obtained by the boast of learning, what is received from a pupil or for the performance of a sacrifice, Bhrigu calls the acquisition of science.

V.—The same rule likewise prevails in regard to artists and in regard to what has been gained in excess of the prescribed hire.

VI.—What has been gained from superiority in learning and what has been acquired in a sacrifice or from a pupil, sages have declared to be the acquisition of science.

VII.—What is otherwise acquired is the joint property."(1)

5. By proving superior learning] by proving extraordinary merit in verbal debates and the like. From a pupil] by affording instruction in Vedas. By officiating as a priest] by officiating at a sacrifice, &c. For answering a question] for replying to a question propounded in regard to the mode of ceremony to be performed in expiation of a heinous crime, &c. For determining a point in dispute] for determining a point in issue, on hearing the allegations of the complainant and the defence of the opponent. For the display of knowledge] for luminously exhibiting one's own knowledge so as to acquire priority in point of honour, &c. By success in disputation] by getting the better of another in an ostentatious and argumentative discussion. For reciting the Vedas with transcendent ability] for completing the recitation of Vedas or parts of them within given time. What is gained through skill by winning from another a stake at play] winning from another a stake at play by the influence of mysterious incantations, such as "Akshahridaya" and the like. What is obtained by the boast of learning] by the boast of high learning. What is received from a pupil] as a mark of veneration to the priest. For the performance of a sacrifice] for watching the progress of a sacrifice, &c. Artists] those who subsist by arts. The same rule] the rule relating to the impartibility of the gains of learning. In regard to what has been gained in excess of the prescribed hire] in regard to what has been acquired over and above the stipulated salary in the teaching of Vedas, &c. What has been gained from superiority in learning] from eminence displayed in learning so as to secure the prize assigned to an eminent person. What has been acquired in a sacrifice or from a pupil] what has been gained as a reward in a sacrifice or from a pupil. All these are to be considered as property acquired by science exclusive. What is otherwise acquired, *i.e.* acquired otherwise than by science or acquired with the use of the paternal common wealth, is the joint property of the undivided co-heirs and is, as such, partible. The remaining portions of the text are too clear to require explanation.

tended to shew that wealth gained by science acquired with the use of joint funds is partible. Be he ever so ignorant] although he be unlearned.

7. Likewise, wealth acquired by means of any art or science, inculcated by the undivided father and the like is also partible. Kátyáyana: "Brihaspati has ordained that wealth shall be partible if it was gained by learned brothers who were instructed in the family by their father or (by their paternal grandfather or uncles); and it is the same if the wealth was acquired by valour."(1)

8. The meaning of this passage is that it has been ordained by Brihaspati that the wealth of those instructed in their own undivided family by their uncles, and the like, or by their father, is partible where it has been acquired by valour or by learning so gained.

9. Even in such acquisition by learning as is partible, the acquirer is entitled to a greater share; Vasishṭha having declared: "He among them who has made an acquisition may take a double portion of it."(2)

10. Gautama, however, permits in some instances the allotment of shares (to co-heirs) at the option of the acquirer, even in such acquisitions by science as are in their nature impartible. "A learned man shall give a share of his own acquired property to learned (co-heirs) at his option."(3)

Learned] learned in science.

11. Nárada says that the acquirer who is not willing need not give this share. "A learned man not disposed to give a share out of his own acquired wealth to a learned co-heir need not give it, unless the wealth was acquired with the assistance of the patrimony, in which case it is partible among them."(4)

12. The wealth referred to in the first hemistich (or the former part) of the above text will be understood from what has been said in the second hemistich (or the latter part) to be *impartible* wealth gained by science (or, in other words, to be the gains of science acquired *without* the use of the patrimony).

13. An unlearned co-heir cannot be allowed a share, although one may be disposed to give it to him. Kátyáyana, accordingly: "Wealth acquired by a learned heir shall never be divided among his ignorant co-heirs; but he may share it with such of the parceners as are equal or superior to him in learning."(5)

14. By saying "shall *never* be divided among the ignorant co-heirs," it is shewn that the wealth shall not be divided with them even though one may be disposed to do so.

15. The same author (Kátyáyana) defines wealth gained by valour. "When (a soldier) performs a gallant action heedless of

(1) II. Cole. Dig., 448, cccxlix.
(2) Vasishṭha, xvii. 51.
(3) Gautama, xxviii. 30.
(4) Nárada, xiii. 11.
(5) II. Cole. Dig., 449, cccl.

risk and favour is shewn to him by his lord pleased with that action; whatever property is then received by him shall be considered as gained by valour."(1) "A gallant action" means a brave feat.

16. The same author propounds another kind of impartible wealth. "That which is taken under a standard is declared not to be subject to partition."(2)

17. He also explains what is called wealth taken under a standard. "What is seized (by a soldier) in war, after risking his life for his lord and routing the forces of the enemy, is named spoil taken under a standard."(3)

18. Vyása has included the above kind of acquisition in the gains of valour. As, however, such a kind of acquisition is of a distinguished character, Kátyáyana propounded it separately under the head of "wealth taken under a standard."

19. In this instance, too, it must be understood that, to render the acquisition impartible, it is necessary that it should have been, like wealth gained by learning, acquired without the use of the undivided wealth of the father and the like. Vyása, therefore, says that whatever is acquired with the use of such wealth is partible by unequal portions. "The brothers participate in that wealth which one of them gains by valour or the like, using any common property, either a weapon or a vehicle. To him two shares should be given, but the rest should share alike."(4)

20. Common property] property belonging in common to undivided co-heirs. The word "brothers" used in the text applies generally to all undivided co-heirs. "To him" means to the acquirer of property with the use of common funds. By saying "by valour *or the like*," it implies that in certain other instances also, such as in case of wealth received with a maiden or wealth received on account of marriage, it is partible where the marriage has been performed with the use of joint funds.

21. Kátyáyana defines wealth received with a maiden and wealth received on account of marriage. "What is received when a damsel equal in class is given in gift (before marriage), let a man consider as wealth received with the maiden: it is deemed pure and promotes increase of prosperity. But let him know that what he receives with his bride is wealth received on account of marriage: all such wealth is considered as auxiliary to virtue."(5)

Received with the maiden] received together with the damsel.

22. As for stridhana, the same author states that all kinds of stridhana are impartible: "Whatever is presented at the time of nuptials to the bridegroom, belongs entirely to the bride and shall

(1) Quoted as Manu's in II. Cole. Dig., 465, cccIx.
(2) Do. do. do.
(3) Do. do. do.
(4) II. Cole. Dig., 281.
(5) Quoted as Manu's in II. Cole. Dig., 463, cccIviii.

not be shared by the kinsmen. The gains of valour and of science as also what is considered stridhana; these are also not liable to partition by the co-heirs at the time of partition."(1)

23. Brihaspati, too, defines what is impartible. "What is given by a paternal grandfather, by a father and also by a mother, the gains of valour, the wealth received with a wife; these belong to him and are not to be taken, that is, claimed by co-heirs."(2)

24. As respects gift by a mother, Nárada declares: "The same law applies also to him to whom anything has been given by his mother through affection, for as a father, so has a mother, power."(3) The giving under this passage must be out of the mother's own peculiar property. "The same law" means the law stated in the case of gift by a father.

25. Gift by a friend is also impartible. Accordingly, Yájñavalkya: "Whatever else is acquired by the co-parcener himself without detriment to the father's estate as a present from a friend or a gift at nuptials, does not appertain to the co-heirs."(4)

26. Manu adds to this a present (madhuparka) made as a mark of respect. "So does anything given by a friend, received on account of marriage or presented as a mark of respect (madhuparka)."(5)

27. The principle contained in Yájñavalkya's text, *i.e.*: "Whatever else is acquired by the co-parcener himself without detriment to the father's estate" (para. 25) is explained by Manu in his passage, "What has been acquired by labour without prejudice to the father's estate."(6)

28. In both the above passages, the word "father" signifies an undivided co-heir generally. "By labour" means by acts requiring labour, such as agriculture, &c. "Without prejudice," means without detriment.

29. Vyása, too: "Whatever a man gains by his own labour without the assistance of the father's estate shall not be given by him to the co-heirs."(7)

30. "Without the assistance," means without deriving assistance for the purpose of gaining. The word "father" is used to denote an undivided co-heir generally.

31. On this subject, Prajápati says:—"Wealth gained by science, valour, or labour, a present made as a mark of respect (madhuparka), a present from a friend or a gift at nuptials to a brother; all these cannot be divided by the other brothers."

By labour] by agriculture, &c.

32. Likewise, where one, by his self-exertion, recovers a

(1) Quoted as Manu's in II. Cole. Dig., 463, ccclviii.
(2) Quoted as Vyása's in II. Cole Dig., 450, cccliv.
(3) Nárada, xiii. 7.
(4) Yájñavalkya, ii, 118.
(5) Manu, ix. 206.
(6) Yájñavalkya, ii. 118.
(7) II. Cole. Dig., 451, cccliv.

property belonging hereditarily to the family and which had been seized by others, he shall not give it up to the co-heirs, it being declared by Yájñavalkya: "Nor shall he who recovers hereditary property which had been taken away, give it up to the parceners."(1)

Property] property not being land.

33. As for landed property, Sankha says: "Land (inherited) in regular succession but which had been formerly lost and which a single heir shall recover, the rest may divide according to their due allotments, having first given him a fourth part."(2)

34. The meaning of this text is, whoever among the sons and grandsons shall recover, by his own exertions, lands descended in regular succession, and which had been formerly lost, that is, seized by others, one-fourth share of such property is to be given to him, and the rest is to be divided by the other brothers in company with the recoverer.

35. Some, however, think that this text of Sankha is applicable to the case of land and every other kind of property recovered by one *without* permission from the other co-heirs granted in the words: "Let what you shall recover be taken by yourself," and that the text of Yájñavalkya refers to land and every other kind of property recovered *with* such permission.

36. Of these opinions, that which is reasonable may be adopted.

37. On the subject of recovering land or other property seized by others, Vyása says, as follows: "Where a co-heir undertakes, whether a partition has or has not taken place, if he recovers common property, he is entitled to a share."(3)

38. The meaning of this passage is, that the co-heir who recovers partible property seized by others takes a double share of such property.

39. Manu enumerates other things exempt from partition. "Cloths, instruments (patram), ornaments, prepared food, water, women, sacrifices and pious acts, (yoga-kshema), as well as the pasture ground (pracháram), are declared not liable to distribution."(4)

40. Cloths] cloths worn by undivided members; Kátyáyana having declared "Cloths are those which are worn on the body."(5)

Instruments (patram)] debts secured by written instruments; the same author having used the expression 'Property founded on a (patram) written instrument.'

Women] female slaves.

Water] water contained in a pond or well situated in one's own house. Yoga-kshema]; this term (a conjunctive compound, as

(1) Yájñavalkya, ii. 119.
(2) II. Cole. Dig., 464, ccclix.
(3) II. Cole. Dig., 464, ccclix.
(4) Manu, ix. 219.
(5) Not found.

it is resolvable into "yoga" and "kshema") has been explained by Laugákshi, as follows: "The learned have named a conservatory act *kshema*, and a sacrificial one *yoga*. These are pronounced indivisible." Or the term "yoga-kshema" may be said to denote that gain which the co-heirs may derive from the king for the performance of yoga-kshema.

Prachára] ground designed for the grazing of cattle; Kátyáyana having distinctly stated: "Pasture ground for kine." Or the word "prachára" may be considered to denote "anganam" (a proper partition in a building) or the like used for entrance and exit.

"Declared not liable to distribution"] "Declared," it must be added here, "by some inconsiderate Smriti-kárars or commentators on law."

41. Therefore Brihaspati:—"They by whom it is asserted that cloths and the like are impartible have not thought that cloths and ornaments would constitute collected wealth among opulent men. These must, therefore, be divided by some skilful mode; else they would be useless."(1)

42. If (for instance) there be but one cloth, the tearing of this into pieces for the purpose of division would lead to the destruction of the thing itself. A similar mode of partition would tend to their destruction in the case of valuable securities. Where there is a large quantity of prepared food to be divided, there would occur wasteage of a great portion of such part of it as should fall to the share of one who requires but a little quantity to eat. As for a well and the like, a division of them is impracticable. Thus it would seem that these things are impartible. Still such a rational mode must be adopted in the distribution of them as would obviate the destruction of the things themselves. If, without doing so, they be allowed to remain in common, it is clear that, where, from motives of malice, obstruction is thrown by one in the way of their enjoyment by the others, the things themselves would be unemployed from no one being able to enjoy them.

43. The same author (Brihaspati) therefore points out the rational mode of distribution of the above things in the following passage: "By the sale of cloths and ornaments; by the recovery of a written debt; by compensating the dressed food with undressed grain, an equitable partition is made. Water drawn from a single pool or well shall be taken in due proportion. Let a single female slave be successively employed by co-heirs in their respective houses, according to their several shares. If numerous, the slaves shall be distributed in equal allotments. The same law applies also to male servants. The benefits received from yoga-kshema shall be equally shared, and the pasture ground for cattle shall also be always used by the co-heirs in proportion to their allotments."(2)

(1) Brihaspati, xxv. 79—80. (2) II. Cole. Dig., xxv. 81—84.

On the recovery of a written debt] on collecting the same from the debtor. In due proportion] in proportion to the share of each.

44. Usanas states: "Sacrificial gains, land, written documents, prepared food, water, and women are indivisible among kinsmen even to the thousandth degree."(1) This text is, however, to be overlooked, and the sacrificial gains and land are to be divided in the rational manner above indicated.

45. The conclusion is, that the gains derived from sacrifices are divisible as also land the division of which (land) is, however, to be made with the assent of all the co-heirs; Prajápati having declared: "Whatever act is done in respect of immoveable property without the consent of the co-heirs, every such act is to be considered as not done where even one of the co-heirs does not consent to it."

46. Again, the same author states: "Partition does not take place of house, lands, sacrificial gains, and also of what has been given by a father or a mother through affection."

47. The prohibition contained in the above passage against division is, however, to be overlooked, and houses and the like are to be equitably divided in the manner afore-mentioned. Accordingly, Kátyáyana, by the passage: "Visible property, *i.e.* house, land, and quadrupeds are to be divided,"(2) expressly permits the partition of house, &c.

48. Likewise, the prohibition against the division of what has been given by a father through affection is also to be disregarded in the case of immoveable property; it being declared by Vriddha Yájñavalkya: "By the affectionate gift of the father, the cloths and ornaments are gained, but immoveable property is not gained even with the father's indulgence."(3)

49. Again, the same author states: "No one is competent even to make a partition of the inheritance descended from ancestors. It is simply to be enjoyed; there can be no gift or sale of the same."(4) Inheritance descended from ancestors] land and the like belonging hereditarily to the family.

No one] not even the father or the like.

By the particle "*api*" (even) being added in the Sanskrit passages to the words "to make a partition," it is shewn that want of power applies also to a sale and the like.

50. The conclusion hence is that no partition, sale, or gift is to be made of hereditary immoveable property, except with the assent of the co-heirs.

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(1) Not found.
(2) II. Cole. Dig., 484, ccclxxiv.
(3) I. Cole. Dig., 411, xi.
(4) Not found.

CHAPTER VIII.

Allotment of shares to sons, grandsons, and the like.

1. Yájñavalkya:—"Among those whose fathers are deceased, the allotment of shares is according to the fathers."(1)

2. Among those whose fathers are deceased] among brothers whose fathers have died undivided.

The allotment of shares is according to the fathers] the shares of property left by the father, grandfather, and great-grandfather are to be adjusted through their respective fathers and not with reference to themselves.

3. If it be asked what distinction does a partition make if made through fathers, Brihaspati states: "Their sons of unequal number are declared to take the shares of their respective fathers."(2)

4. The meaning is, where the sons of the deceased fathers are of unequal number, that is, of greater or less number, the sons of each father take the share of their own father only. For example: when one has a single son, another two, and a third many, the only son receives one share in right of his father, the two sons take one share appertaining to their father, and similarly the many sons obtain the one share due to their father.

5. Although, by the shares being thus adjusted through fathers, there might occur inequality in the shares of sons by different fathers, yet such a mode of adjustment must be observed as being expressly enjoined.

6. Where, among unseparated brothers having sons, one dies, and his son has received no share from his grandfather, and the grandfather dies, Kátyáyana says: "Should a brother (anuja) die before partition, his share shall be allotted to his son, provided he has received no fortune from his grandfather; a son's son shall receive his father's share from his uncle or from his uncle's son."(3)

"Fortune" means the wealth called heritage. The term "anuja" has been used in the text to denote a deceased brother in general, whether he be a junior or a senior brother.

7. Where there may be several sons of a deceased brother, then too, the same author states: "The same share shall be allotted equitably to all the brothers."(4)

Shall be allotted equitably to all the brothers] shall be divided in equal shares among all the sons according to the principle: "Equality is the rule where there is nothing laid down to the contrary."

8. The same author further states: "Or (if that grandson

(1) Yájñavalkya, ii. 120.
(2) *Ibid*, xxv. 14.
(3) II. Cole. Dig., 241, lxxix.
(4) Do.

be also dead), let his son take the share; beyond him succession stops."(1)

9. The meaning is, that the son of the grandson of the deceased proprietor takes, in default of his father, the share of his father. Where there is no such son too (*i.e.* son of the grandson), but his sons are in existence, they, as the descendants of the deceased proprietor, do not take a share in the property of their great-grandfather. The right of inheritance here ceases.

10. The objector asks how does a great-grandson at least take a share in his great-grandfather's property, the right by birth being ordained by law only where the son or grandson inherits the property of his father or grandfather.

11. This is true, but a great-grandson has been declared entitled to his great-grandfather's property, just on the same principle on which a son and the like have been declared entitled to their mother's property. This is simply because they survive the deceased, and offer funeral oblations to her. It has hence been properly declared : " Let his son take the share."

12. It must hence be understood that whoever, by reason of the deceased proprietor being related to him as father, grandfather, or great-grandfather, offers funeral oblations to him, becomes entitled to participate in his (deceased's) property notwithstanding that the deceased has got other sons, grandsons, and the like.

13. Hence Devala :—" Sages declare partition of heritable property to be co-ordinate with the gifts of funeral cakes."(2)

14. The meaning is, that Manu and other sages contemplate the partition of inheritance as well as the presentation of funeral oblations to extend to the fourth in descent.

15. Accordingly, the same author :—" Partition among parceners having undivided wealth [avibhaktavibhaktánám], and being members of the same family, and who have long lived together, shall extend to the fourth in descent. This is a settled rule. So far, [*i.e.* as far as the fourth in descent], kinsmen are sapiṇḍas, *i.e.* connected by funeral oblations. Beyond this, a difference occurs in the offer of funeral cakes."(3)

16. Avibhaktávibhaktánám] among persons having undivided wealth. Members of the same family] belonging to the same family but sprung from different branches. Who have long lived together] who have resided together for a considerable period. Partition shall extend to the fourth in descent] partition shall be allowed as far as the great-grandson of the deceased owner. Thus stands the rule of partition of heritage among parceners sprung from different branches of the same family.

17. If it be asked how, in the case of one whose father is alive, he obtains partition of his [deceased] grandfather's property with

(1) II. Cole. Dig., 241, lxxx. (2) II. Cole. Dig., 243, lxxxii.
(3) II. Cole. Dig., 242, lxxxi and lxxxii.

his father, Kátyáyana says: "Grandfather's property vests equally in both the son and father."(1) Vyása, too:—"A father and his sons are entitled to share equally the house and land descended from ancestors."(2) Brihaspati, also:—"Of property acquired by the grandfather, whether moveable or immoveable, equal shares are ordained for both the father and the son."(3)

18. Yájñavalkya, on the same subject:—"The ownership of father and son is the same in land which was acquired by the grandfather or in a corrody [nibandha] or in a chattel [dravyam] which belonged to him."(4)

A corrody [nibandha] signifies a permanent allowance received from saleable articles, in virtue of an agreement or promise. The expression "The ownership of father and son is the same," used in the above passage of Yájñavalkya, must be understood to mean that a father and a son shall have equal shares. Otherwise, the import of the passage cannot agree with the texts previously quoted, namely, those of Kátyáyana, Vyása, and Brihaspati.

19. The conclusion hence is that, even where a partition takes place during life-time of the father, an unequal partition could never be resorted to in the case of the wealth of the grandfather or the like; but, with regard to self-acquired property, that is, property acquired by the father, it has been pointed out in the chapter treating of partition during life-time of the father, that unequal partition prevailed in some instances in former ages.

20. Some give the expression "The ownership of father and son is the same," used in the above passage of Yájñavalkya, the full force which the terms convey, and hold that a partition of the grandfather's property takes place even at the will of the grandson alone, and that a father is not, of his own authority, competent to make a gift or the like of hereditary property; the grandson [of the deceased], in the case of such property, possessing an equal ownership with the father. Such a construction is acceptable, it being pertinent, and Vishṇu, too, declaring: "In the case of the grandfather's property, the ownership of father and son is equal."(5)

21. It would seem from the above construction that in the case of the father's property, the ownership of the father and son is unequal, [equality of ownership having been specifically ordained in the case of the grandfather's property alone]. But this gives rise to the question, how could there exist such an inequality while one possesses a right by birth in both his grandfather's and father's property? The reply, however, is that, in the case of the grandfather's property, the ownership [swámyam] and also independent power [svátantryam] are both equal in the father and son. Whereas, in the case of the father's property, while he is alive and free from

(1) Not found.
(2) H. Cole. Dig., 258, xciv.
(3) Brihaspati, xxv. 3.
(4) Yájñavalkya, ii. 121.
(5) Vishṇu, xvii. 2.

defect, he [father] alone possesses independent power [svátantryam] and not the son. Hence alone arose the stated difference.

22. Kátyáyana, however, says: "A son has no ownership [svámyam] over the self-acquisition of the father."(1)

But this passage must be understood to indicate simply the incompetence of the son to enforce, at his own will, a partition of such property during the life-time of the father. It cannot be taken in its literal sense. There is thus no contradiction.

23. Vyása, on this subject, is explicit in his terms: "Sons cannot claim a partition of wealth acquired by their father against their father's will."(2)

24. Brihaspati says:—"Over property descending from a grandfather but seized by strangers, which the father recovers by his own powers, and over what the father has gained by science, valour, or the like, ownership [svámyam] is declared to be in the father."(3) Here, too, the term "ownership" [svámyam] must be understood, from the context of the passage, to mean independent power [svátantryam].

25. The same author also defines independent power: "He may give the wealth away at his pleasure or himself enjoy it [bhogám kuryát], but after his death, his sons are pronounced entitled to equal shares."(4)

26. The purport of the above passage is that the father, even without his son's permission and on the strength of his own independence, is competent to make a gift or the like of his self-acquired property, or make an unequal partition of it in the instances described in the chapter treating of partition during life-time of the father.

27. Kátyáyana points out, by the following passage, that sons cannot compel their father to divide with them such hereditary property as [by reasons of its being recovered] ranks as self-acquired, as well as the self-acquired property of the father. "Whatever property seized by strangers, a father recovers by his own exertions, whatever a father himself acquires, he need not give any such property in partition to his sons."(5)

28. The meaning is, that which belongs hereditarily to the family but had been seized by strangers and recovered by the father through his self-exertion alone, and that which was acquired by the father himself through science, valour, or the like, these the father need not give to his sons in partition.

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(1) Not Found.
(2) *Ibid*, 258, xciv.
(3) Brihaspati, xxv. 12.
(4) *Ibid*. xxv. 13.
(5) Not Found.

CHAPTER IX.

STRIDHANA, OR WOMAN'S PROPERTY.

Of the different descriptions of stridhana.

1. Manu, in the first place, describes the different kinds of stridhana: "What was given before the nuptial fire [Adhyagni], what was presented in the bridal procession [Adhyávahanika], what was given through affection, and what has been received by her from her brother, mother, or father, are denominated the six-fold property of a woman."(1)

2. Kátyáyana here details the meaning of the first hemistich of the above passage. "What is given to a woman at the time of her marriage before the nuptial fire is celebrated by the wise as woman's property bestowed before the nuptial fire [Adhyagni]. That gain which a woman receives while she is conducted from her father's house [to her husband's dwelling] is instanced as the property of a woman, under the name of gift presented in the bridal procession [Adhyávahanika]. What has been given to her through affection by her mother-in-law or by her father-in-law or has been given to her at the time of making an obeisance at the feet is denominated an affectionate present."(2)

What has been received by her from her brother, mother, or father] ; add to these words "occasionally on account of subsistence."

3. The term "sixfold" has been used in the above text of Manu to avoid the supposition that what has been enumerated in the second hemistich of the passage are the *only* sorts of stridhana. It is not to be taken as a restriction of a greater number [but as a denial of a less]. Therefore, Yájñavalkya, in the passage: "What was given to a woman by the father, the mother, the husband, or a brother, or received by her at the nuptial fire, or presented to her on her husband's marriage to another wife [Adhivedanika], as also any other [separate acquisition], is denominated a woman's property,"(3) has made use of the suppletory term Ádyá, "any other [separate acquisition]."

4. Vishṇu describes more than six kinds of stridhana. "What has been given to a woman by her father, her mother, her son, her brother, what has been received by her before the nuptial fire, what has been presented to her on her husband's espousal of another wife (Adhivedanika), what has been given to her by kindred as her perquisite (*sulka*), and a gift subsequent (Anvádheyika), all these constitute a woman's separate property."(4)

Adhivedanika] what is given to the first wife as a compensation for the supersession. What has been given to her by kindred];

(1) Manu, ix. 194.
(2) H. Cole. Dig., 585, ccccixiv, ccccixv and ccccixvi.
(3) Yájñavalkya, ii. 143.
(4) Vishṇu, xvii. 18.

the word "kindred" in this phrase refers to kindred, not being a father or any other above expressly mentioned. This is on the analogy of the phrase "beeves and oxen."(a)

5. Kátyáyana defines, as follows, the terms '*sulka*' and 'Anvádheya' :—"Whatever is received as the price of household utensils, of beasts of burthen, of milch cattle, of ornaments or dress or for works is called perquisite (*sulka*). What has been received by a woman at a time subsequent to marriage from the family of her husband or from the husband or parents, Bhrigu pronounces to be a gift subsequent [Anvádheya]."(1) Price] price of household utensils, &c. Received (used in the definition of *sulka*)] received from the bridegroom or the like as the bride's wealth and in trust for the bride.

6. On the subject of gift of property to a woman by a father, mother, or the like, for the sake of subsistence, the same author further says: "Separate property, excepting immoveables, is to be given to a woman by her father, mother, husband, brother, or kindred, according to the means of each, as far as two thousand."(2)

7. The meaning is, that the wealth to be given is to be exclusive of immoveable property, and that the gift may extend to two thousand Karsha Panas.

8. Vyása, too:—"A present amounting to two thousand at the utmost [paro] may be given [dáyah] to a woman out of the wealth."(3)

"Dáyah"] may be given. This is derived from the verb "to give" [Deeyata-Iti-Dáyah].

Paro] the utmost.

9. It is hence to be understood that property worth more than two thousand Karsha Panas is not to be allotted to a woman even by the wealthy, for the sake of her subsistence.

10. With reference to the amount of gift so fixed, it is to be gathered that the payment is to be made every year, and that to such payment alone the rule in question is applicable. Where, however, a payment is made, once for all, to meet the charges of subsistence for several years, neither the restriction of amount as above shewn, nor the prohibition against the gift of immoveable property, applies.

11. Ornaments or the like given to a woman on condition that they are to be worn only on occasions of festivals, &c., as well as

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(1) II. Cole. Dig., 588, ccccLxviii. (2) II. Cole. Dig., 588, ccccLxviii.
(3) II. Cole, Dig, 600, ccccLxxxii.

(a) The analogy of the phrase 'beeves and oxen'.] This is what is technically well known as 'gobalivardhanyáya'. The word 'go' is a generic term in the denotation of which 'balivarda' is included. Therefore when the words 'go' and 'balivarda' happen to be both subjects or objects of the same predicate, the denotation of the former is narrowed so as to exclude the thing denoted by the latter and thus to justify the separate mention of the latter. The same rule is applied in the construction of words in such sentences as 'fetch the Bráhmins and Vasishṭha.'

property given with a view of defrauding the co-heirs, will not constitute stridhana or separate property of a woman, for Kátyáyana thus declares: "But whatever has been given conditionally or with a fraudulent design by the father, brother, or husband, is declared not to be stridhana or woman's property."(1)

12. The objector says:—A gift made by the father or the like does not become stridhana or woman's property, even where it is made unconditionally and without a fraudulent design; for there is the text: "A wife, a son, and a slave are all incapable of property [nirdhana]: the wealth which they may earn is the wealth of the man to whom they belong."(2)

13. Reply, this is not so. As the word "wife" has been used in the passage above quoted with the words "son, &c.," it must be understood that it is not thereby intended to declare a woman to be actually incapable of property [nirdhana], as, in that case, incapability in question would also apply to a son, which is quite opposed to law. The passage is simply indicative of the want of independent power of a woman to make expenditure or the like from the wealth. The spirit of the passage must hence be understood to be that a wife and others cannot make expenditure even of their separate property without the permission of him to whom they belong.

14. Manu, therefore, says:—"Women should never make expenditure [nirháram] from the wealth of the family common to many, inclusive of themselves, or even from their separate property, without the permission of their respective lords."(3)

15. The meaning is, that women who are naturally wanting in independence cannot, of their own choice, make disbursements, use, or the like of property belonging in common to themselves and their husbands, or of property belonging to them exclusively.

16. Or the passage, "A wife, a son and a slave are all incapable of property [nirdhana], &c." (para. 12), may be taken as relating to the wealth earned by a woman by mechanical arts or the like; for, in respect of such wealth, Kátyáyana says: "The wealth which is earned by mechanical arts or which is received through affection from others, is always subject to her husband's dominion. The rest is pronounced to be the woman's property (stridhana)."(4)

From others] from friends or the like. This is so to be construed, for it has already [para. 4 of this section] been noticed that whatever is received from the father or the like is stridhana.

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(1) II. Cole. Dig., 690, ccccIxxxii.
(2) Anonymous.
(3) Manu, ix. 199.
(4) II. Cole. Dig., 589, ccccIxx.

SECTION II.

Dominion over stridhana, or separate property of a woman.

1. Vyása:—"What has been given to a woman by her husband, she may consume as she pleases."(1)

2. The author points out by the above text the independent, power of a female over what was given to her by her husband after having, by the particle "*cha*" used in the text, hinted the absolute dominion of a female over such kind of wealth also as is called "Saudáyika."

3. Kátyáyana, too, on the subject:—"The independence of women who have received the gift termed Saudáyika is recognized in regard to that property, for it was given to soothe them, and for their maintenance. The power of women over Saudáyika is *ever* celebrated, both in respect of donation and of sale according to their pleasure, even in the case of immoveables. Let the woman use her husband's donation as she pleases, when he is deceased; but while he lives, she should carefully preserve it."(2)

4. By the use of the word "ever" in the second of the above texts, it is understood that a woman possesses independent power over the stridhana termed Saudáyika even during the life-time of her husband. In regard, however, to the husband's donation, that is, what was given by the husband, she is declared, by the three-quarters of the verse immediately following the second text above noticed, to acquire independent right only after the death of her husband. But while he lives, she is incompetent to dispose of what was given to her by him without his permission. She is only bound to preserve that; "she should carefully preserve it."(3)

5. The same author [Kátyáyana] also defines Saudáyika: "That which is received by a married woman or by a maiden in the house of her husband, or of her father, from her brother or from her parents, is termed the gift of affectionate kindred [Saudáyika]."(4)

That which is received] the wealth that is received.

6. Vyása, accordingly:—"Wealth which is received by a woman either at the time of, or subsequent to, marriage, from the house of the father or the husband, is denominated 'Saudáyika'."(5)

7. Both the foregoing passages tend to show that Saudáyika is the wealth called "Yautaka," or the like, received by a woman from her own parents or persons connected with them, in the house of either her father or her husband, from the time of her betrothal to the completion of the ceremony to be performed on the occasion of her entering her lord's house.

8. The objector here says: It is stated in the Nighantu

(1) II. Cole, Dig., 589, ccccIxx.
(2) *Ibid*, 594, ccccIxxv.
(3) II. Cole, Dig., 595, ccccIxxvii.
(4) *Ibid*, 594, ccccIxxv.
(5) Not found.

[Dictionary] that "Whatever 'yautaka' or the like is given, is called 'Sudáya' and it is the absolute property of a female." How, then, it is called here "*Saudáyika*"?

9. The reply is that, according to grammar, "Saudáyika" bears the same sense with its etymon "Sudáya."

10. Over immoveable property, however, given to a woman by her husband, she does not possess independent power. Nárada, accordingly:—"What has been given by an affectionate husband to his wife, she may consume as she pleases, when he is dead or may give it away, excepting immoveable property."(1)

11. The purport of the above passage is, that a wife possesses no independent power over immoveable property given by her husband, even after his death.

By the words "as she pleases" used in the above text of Nárada, the liberty over other than immoveables is shewn.

12. From all the foregoing, it must be concluded that women possess independent power only over Saudáyika and over their husband's donation excepting immoveables, and their power is not independent over other sorts of property although they may be stridhana.

13. As for the husband and the like, they possess no independent power over any sort of stridhana, for Kátyáyana says:—"Neither the husband, nor the son, nor the father, nor the brothers can assume the power over a woman's property to take it or bestow it."(2) This is because the husband and others possess no ownership over such property. Hence the same author continues:—"If any one of these persons by force consumet the woman's property, he shall be compelled to make it good with interest and shall also incur a fine. If such person having obtained her consent, use the property amicably, he shall be required to pay the principal when he becomes rich."(3)

14. From its being mentioned that the principal is payable when he becomes rich, it is inferrible that the re-payment of even the principal is not necessary in the case of a poor man. It also appears from re-payment of the principal being enjoined even where stridhana is used with permission, that the husband and the like are wanting not only in independent power, but also in ownership over stridhana. It must hence be understood that in a husband's property, the wife, by reason of her marriage, possesses always ownership, though not of independent character, but that the husband does not possess even such ownership in his wife's property.

15. Hence Devala declares, by the following passage, that the husband is not competent even to use the stridhana of his wife.

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(1) Not found in Nárada, S. B. E. Series but found quoted as his in II. Cole. Dig., 595, ccccLxxvi.

(2) II. Cole. Dig., 594, ccccLxxv—4. (3) II. Cole. Dig., 594, ccccLxxv. 5 and 6.

"Her subsistence [vritti], her ornaments, her perquisite, and her gains [lábham] are the separate property of a woman. She herself exclusively enjoys it, and her husband has no right to use it unless in distress. If he let it go in vain, or consume it, he must repay the value to the woman with interest."(1) Vritti] wealth given by the father or the like for subsistence. Lábham] that which is gained is Lábham. [Labhyata iti lábhah]. Under this definition, that which a woman receives on occasions of fastings, &c., as an offering to gratify Parvati or other goddess, ranks also as stridhana.

The pronoun "herself" has been used after "she," in the above passage, in order to show that the property is to be enjoyed by the woman even to the exclusion of her offspring. As for the exclusion of the husband, that has been expressly provided for by the sentence: "And her husband has no right to use it." The husband himself being excluded, the exclusion of the other relatives such as brother, or the like, is inferrible by the analogy of the loaf and staff.(a)

In vain] on occasions when there is no distress.

If he let it go] if he gives it away.

16. The above passage of Devala is applicable to a case where a husband gives away or consumes his wife's stridhana without her [wife's] permission *but without force*. This is inferrible from the circumstance that no injunction of penalty, such as fine, is annexed to the direction contained in the passage that the value of the property must be re-paid to the woman with interest.

17. By the sentence: "Her husband has no right to use it *unless in distress*" in the above passage of Devala, it would appear that, in times of distress, the husband alone is competent to use the woman's property and none else.

18. Therefore, in the subsequent text of the same author: "Or the property of a woman may be used to relieve a distressed son," the words "by the husband" must be understood after the words "may be used." The term "son" has been used to denote any member of the family. The distress referred to must be of such a character as it is impossible to get rid of, except with the use of stridhana.

To relieve] to save. By the particle "*va*" [or] being used in the above passage, it must be understood that, on other occasions also of extreme distress incapable of being obviated except with the use of stridhana, the husband is competent to use or give it away, though he may not have obtained the permission of his wife for the same.

19. The objector here asks how could competency be declared in a man to use or give away another's property without the permission of such other person?

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(1) II. Cole, Dig. 594, ccclxxv.
(a) *Vide* note, p. 26 of this volume.

20. The reply is that, even should the permission of the owner be wanting, where the owner is one [as a wife] subject to the control of the party requiring the stridhana, although he is not competent to alienate the property at will, yet his competency to use or consume it with the view of getting rid of a distress has been expressly sanctioned by the passage above quoted. Hence, there is no illegality in the matter.

21. Yájñavalkya on the subject:—"A husband is not liable to make good the property of his wife taken by him in a famine or for the performance of a duty or during illness or while under restraint."(1)

For the performance of a duty] whether the duty be perform, able daily or occasionally. The particle "*cha*" used in the text tends to show that the duty contemplated refers also to a tempora-duty [kámyam] and, in some instances, to expiatory ceremoniesl such as "graha yajña" or the like. While under restraint] while under the coercion of creditors or the like, which it is impossible to get rid of without payment of money. Taken by him] taken by him under circumstances leaving no alternative. After the sentence "A husband is not liable to make good," add the words, "Where he has no means to re-pay the amount, as in the case of poverty." When he acquires means, it is necessary that he should re-pay what he has taken out of the stridhana.

22. Kátyáyana, in some instances, declares re-payment not to be imperative. "Whatever has been knowingly permitted through affection to be taken by one afflicted by disease, suffering from grief or sorely pressed by creditors, he may re-pay it whenever it is his will to do so."(2) Knowingly]; the knowledge referred to must be of the wife. Permitted] allowed.

23. Although this passage, from being placed in the Smriti of Kátyáyana next to the three texts: "Neither the husband, nor the son, &c., para. 13," would lead to the supposition that it is applicable to the husband and others also, yet a consider-ation of the texts following the passage, shews that the passage in question is applicable to the husband *alone*. The texts are: "But if the husband have a second wife, and do not show honour to his first wife, he shall be compelled by force to restore the property, though amicably lent to him. If suitable food, raiment, and dwelling be withheld from the woman, she may exact her own (property)."(3)

24. Where, however, the woman is extremely wicked, even if she had not permitted the use of her separate property [as above noticed], she is herself incompetent to use it, for the same author [Kátyáyana] says:—"But a wife who does malicious acts injuri-ous to her husband, who has no sense of shame, who destroys the wealth, or who takes delight in being faithless to his bed, is held

(1) Yájñavalkya, ii. 147. (2) II. Cole. Dig., 594, ccccIxxv—7.
(3) II. Cole. Dig., 599, ccccIxxxi.

unworthy of stridhana or separate property."(1) Unworthy] unworthy to alienate at will.

25. A stridhana promised by the husband [but not accepted by the wife during his life-time] must be paid to her afterwards. Accordingly, Kátyáyana:—"What was promised to a woman as her stridhana by her husband must be delivered by his sons like a debt."(2) The word "son" includes also the grandson.

26. By the use of the words "like a debt," it will be seen that this passage also tends to show that sons and the like possess no ownership whatever over the stridhana of their mother. Hence it is settled that there is no partition of stridhana during the life-time of the woman, she herself being the exclusive owner of it.

27. Therefore, Manu:—"Their kinsmen who take their wealth in their life-time, a virtuous king should chastise by inflicting the punishment of theft. Such ornaments as are worn by women during the life of their husband, the heirs of the husband shall not divide among themselves: they who do so are degraded from their caste."(3)

28. As are worn]; here the word "constantly" must be added; for constant wearing raises the presumption that the ornaments worn are stridhana, and excludes every hypothesis of fraudulent motive. As the above passage refers to property positively ascertained to be stridhana, it must be understood that constant wearing is essential to constitute such property. Kinsmen] daughter's son and the like.

SECTION III.

Succession to woman's property.

1. Manu:—"What she received after marriage (Anvádheya), and what her lord may have given through affection (priténa), shall be inherited, even if she die in his life-time, by her children (Praja)."(4)

2. Anvádheya is wealth received by a woman subsequent to marriage from the family of her husband or from the family of her father, it being declared by Kátyáyana: "What has been received by a woman from the family of her husband, at a time posterior to her marriage, is called a gift subsequent (Anvádheya); and so is that which is similarly received from the family of her father."(5)

3. In disjoining the compound term "Anvádheya," anuádheya is obtained. The sense of *anu* 'after' is explained by what has been said in the text, "at a time *posterior* to her marriage," and of *ádheya* 'to be received' by the word "received" used in the text.

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(1) II. Cole. Dig., 602, ccccIxxxiv.
(2) *Ibid*, 601, ccccIxxxiii.
(3) Manu, ix. 200.
(4) *Ibid*, ix. 195.
(5) II. Cole. Dig., 587, ccccIxviii.

4. The purport of the passage is, that Anvádheya and what was given through affection by the husband alone (prítidatta), both these kinds of stridhana, on the death of the woman who was the owner thereof, become the property of her children, male and female, that live at the moment next succeeding that of the death of the woman. Hence, the property of a woman leaving children will not be inherited by the husband, even though he survives her, but only by the surviving children of the woman.

5. From the foregoing, it would appear that survival is the only circumstance recognized by law as creating a right to inherit the property of a deceased woman. Therefore, wherever the property of one dying without issue devolves on another by reason of the death of the proprietor, survival alone is considered as conferring a right on the inheritor to inherit the property of the deceased.

6. By the mention of the common term "children," in the above text of Manu, it is understood that both the male and female children acquire, at one and the same time, a right to inherit the two kinds of stridhana referred to in the text, namely, Anvádheya and Prítidatta; and that the property, therefore, descends simultaneously to them, and not first to daughters, and on failure of them, to sons. The daughters and sons, or, in other words, the brothers and sisters, must therefore divide the property among them. It must hence be understood that the passage of the same author [Manu]: "When the mother is dead, let all the uterine brothers and the uterine sisters equally divide the maternal estate,"(1) is applicable to the two descriptions of stridhana [Anvádheya and Prítidatta] mentioned by himself in the preceding passage.

7. On the same subject, Brihaspati notices a distinction: "A woman's property goes to her children [male] and the daughter also is a sharer with them, provided she be unaffianced; but if married, she receives a mere token of respect."(2)

8. In the above passages of Manu and Brihaspati, the conjunctive particle "*cha*" is used to indicate reciprocation [itaretara]. It is therefore to be understood that partition takes place among them [brothers and sisters] on principles of reciprocity. In other words, brothers and sisters share together.

9. Hence Kátyáyana: "Sisters having husbands shall share with kinsmen."(3)

"Kinsmen" means brothers born of the same mother. The words "having husbands" were used in the text, in order to exclude widows, but not unaffianced daughters; for the exclusion of unaffianced daughters would contradict the preceding passage.

10. Manu, referring to such daughters as share equally with brothers by the same mother, declares:—"Even to the daughters of those daughters, something suitable may be given through affection from the assets of their maternal grandmother."(4)

(1) Manu, ix. 192.
(2) Brihaspati, xxv. 87.
(3) Not found.
(4) Manu, ix. 193.

"Suitable" means so far as is necessary for the performance of religious duties, regard being had to the poor condition and the like of the party receiving the amount.

11. If it be asked how something can be declared to be given to a daughter's daughter from the grandmother's property while she possesses no sort of ownership over it during the life-time of the brothers and sisters [that is, the sons and daughters] of the deceased grandmother? the reply is as follows: an unmarried daughter, though not entitled to inherit the estate of her father (having sons), is declared by law to be entitled to receive one-fourth portion from her brother. Likewise in this instance also, although a grand-daughter has no ownership, yet something may be paid to her by the brothers and sisters on the strength of the precept (permitting such a payment). There is, however, this difference. In the case of an unmarried daughter, although she is not entitled to inherit the property of her father, yet Manu, bearing in mind that she possesses an interest *by birth* over the said property, attaches a penalty to the non-payment (of one-fourth portion to her) by the passage: "And they who refuse it shall be degraded." But in the present instance, the grand-daughter possesses no interest by birth, and, therefore, it has been said in the passage "may be given through affection," thereby implying that if there be affection, something may be given; otherwise not.

12. The same author [Manu] further states that a certain other kind of stridhana, or separate property belonging to the mother, goes to unmarried daughters alone and not to all daughters and brothers generally. "Property given to the mother on her marriage or 'Yautaka,' is the share of her unmarried daughters."(1)

13. Yautaka is wealth given by any one to the bride and bridegroom, while seated together, at a marriage or the like. It is said in the Nighantu [Dictionary] that "the word Yautaka is derived from their being then joined together [yuta]." The meaning is, that wealth given to the bride and bridegroom is denominated Yautaka, the term "Yautaka" deriving its origin from "yuta" (mingling).

14. Devasvámi, however, contemplates Yautaka to be of two descriptions. "What was received from the father's house, being different from what was received from the house of the husband, is called the mother's Yautaka. It belongs exclusively to the mother." The propriety of this opinion is doubtful, the distinction being one created by the author [Devasvámi] himself.

15. The distribution of Yautaka, where there are several unmarried daughters, is to take place according to the principle, "Equality is the rule where there is nothing laid down to the contrary;" a different mode of partition not being prescribed.

16. The maternal estate, not included in the three kinds above noticed, belongs only to such daughters as are unmarried and un-

(1) Not found.

provided though married, and not to all daughters indiscriminately. Accordingly, Gautama : " A woman's property goes to her daughters unmarried and unprovided."(1)

17. The meaning is, that such kinds of stridhana as are denominated " Adhyagni " and the like belong to daughters unmarried, and married but unprovided. The wealth is to be divided among such daughters alone. The term " unprovided," used in the above text of Gautama, is to be interpreted, according to Aparárka, as implying an issueless, unendowed (that is destitute of wealth), unfortunate (durbhágá), or a widowed daughter. The construction which Vijñánesvara has put upon the passage is to be rejected as founded on assumptions unwarranted.

18. Yájñavalkya lays down a further rule on the subject. " The daughters share the residue of their mother's property after payment of her debts."(2)

19. The meaning is that, after the death of the mother, her daughters unmarried and unprovided are to share equally the residue of their mother's wealth after discharging the debts that had been contracted by her.

20. If there be no such daughters, the same author adds: " And the issue succeed in their default."(3)

21. Nárada lays down the same rule in more explicit terms: " On failure of daughters, their issue."(4)

22. As unmarried daughters could have no issue, the above text must necessarily be understood to refer to the issue of married daughters. It is further inferrible that the issue must be female, the wealth descending in the female line. The comprehensive term " issue " has been used in the text to admit of the male issue of daughters taking the wealth in default of the female issue.

23. On failure of daughter's sons also, the sons of the deceased woman divide her wealth and debts ; it appearing from the text of Yájñavalkya : " Let sons divideeq ually the assets and debts after the death of their parents [pitarau]," (5) that, after the death of the mother, the sons are entitled to divide equally her wealth and also her debts. Were the text held inapplicable to the maternal estate, the use of the ekasesha term ' pitarau ' " parents " in the text would become useless.

24. In default of sons, the assets and debts of the deceased go to her son's sons. This is because by the text: " Debts must be paid by sons and sons' sons," (6) sons' sons are declared liable to discharge the debts of their paternal grandmother, and because it is laid down that debts must be discharged by those that take the assets.

25. Where the grandsons are by different sons, and the year

(1) Gautama, xxviii. 24.
(2) Yájñavalkya, ii. 117.
(3) *Ibid*, ii, 117.
(4) Not found in Nárada.
(5) Yájñavalkya, ii. 117.
(6) *Ibid*, ii. 50.

unequal in number, the allotment of shares to them, during partition of their grandmother's assets and debts, is to be [as is the case in the partition of grandfather's property] according to their respective fathers. Likewise, where there are several granddaughters and grandsons by different daughters and unequal in number, their shares are to be allotted to them through their mothers; it being declared by Gautama: "Or the partition may be according to the mothers, and a particular distribution may be made in the respective sets."(1)

26. Kátyáyana says:—"On failure of daughters, the inheritance goes to sons."(2) The term "daughters" used in this text means unmarried daughters, as in their case only there could exist no issue of either sex. The text of Kátyáyana must, therefore, be understood as applicable to that kind of stridhana which is called "Yautaka."

27. Where a wife leaves no progeny, her wealth goes to her husband; it being declared by Yájñavalkya: "The property of a childless woman [married] in the form denominated Bráhma or even in any of the four [unblamed modes of marriage] goes to her husband."(3) By the use of the particle *api* "even" in the above text, the marriage of the form of "Gándharva" is also included.

28. Hence, Manu:—"It is ordained that the property of a woman married in the form called Bráhma, Daiva, Ársha, Gándharva or Prájápatya, shall go to the husband, if she die without issue."(4)

29. The property of a woman married in one of the five forms specified, goes, in default of heirs from daughters down to the son's son, to the husband of the deceased and not to the mother and the like relations.

30. The text of Kátyáyana:—"What was given by kinsmen goes, *in default of the kinsmen*, to her husband,"(5) refers to the property of a woman married in any but the five forms of marriage above described; for the same author has accordingly declared:—"What is received from parents by a woman married in the form called 'Ásura' and the like, goes, in default of her issue, to her mother and father."

Received from parents] received from mother, or father, as a present. In default of her issue] in default of the issue of the woman married in the form of Ásura or the like. The word "issue" denotes the whole range of heirs from daughter's son to son's son, who have been declared above as capable of inheriting stridhana.

31. Yama says:—"Wealth which is given at the marriage called 'Ásura' or the like is to be taken by the father alone, where the woman dies without issue."(6) The word "given" used in the

(1) Gautama, xxviii. 17.
(2) Not found.
(3) Yájñavalkya, ii. 145.
(4) Manu, ix. 196.
(5) II. Cole. Dig., 620, dxii.
(6) *Ibid*, 616, dv.

text means "given by the father," and hence this text is not inconsistent with the one already cited.

32. In like manner, it must also be understood that stridhana or property given to a woman married in the form of "Ásura" or the like, by her paternal uncle, brother, maternal uncle, and other similar relations, reverts, after her death, to such relations, where they survive her, and that failing them, it goes to her husband. Gautama, however, as an exception to this rule, says that a certain kind of donation made by relations does not go back to the donors. "The sister's perquisite [*sulka*] belongs to the uterine brothers; after them, it goes to the mother."(1)

33. The definition of *sulka* is given in the former section. This kind of property, though given by the bridegroom and the like, does not revert to them, but goes to the uterine brothers, and in default of them, to the mother.

34. Sankha, after premising "may take back," proceeds: "The bridegroom [may take back] his nuptial present."(2) This text must be considered as applicable to the case of a bride dying before the completion of the marriage; it being declared by Yájñavalkya: "If she die, let what had been presented be taken back."(3)

What had been presented] whether a *sulka*, ornaments, or the like. Be taken back] be taken back by the bridegroom.

35. Baudháyana, referring to the wealth of a damsel, says:— "The wealth of a deceased damsel, let the uterine brothers themselves take. On failure of them, it shall belong to the mother; or if she be dead, to the father."(4)

36. Brihaspati enumerates secondary mothers and points out who takes their inheritance. "The sister of a mother, the wife of a maternal or of a paternal uncle, the sister of a father, the mother of a wife, and the wife of an elder brother are declared equal to a mother. If they leave no (male) issue of their body, nor the son of a daughter, nor a daughter, the sister's son and the like shall inherit their property."(5)

37. The sons of the sisters of the deceased take the property of their maternal aunt. Likewise, it must be understood, by the use of the words "and the like" in the text, that the other heirs are to take the wealth of their respective secondary mothers in due order.

38. Likewise, the issue of a rival wife takes the property of the step-mother, where the latter leaves no progeny, husband, or the like.

39. Manu declares that, in certain instances, the issue of a particular class of rival wives take the property of the deceased step-mother notwithstanding the survival of the latter's husband,

(1) Gautama, xxviii. 25.
(2) II. Cole. Dig., 619, dx.
(3) Yájñavalkya, ii. 146.
(4) Not found.
(5) Brihaspati, xxv. 88 and 89.

father, brother, or the like. "The wealth of a woman which has been, in any manner, given to her by her father, let the Bráhmiṇí damsel take; or let it belong to her offspring."(1)

40. By the phrase "given to her by her father," it is intended to show that the Bráhmiṇí damsel takes the inheritance even if the brother, father, and others who are declared above to be capable of taking the inheritance should exist. The purport of the passage hence is, that the property of a woman of a *class different* from that of her husband is inherited where she has no issue, by the damsel of another wife of the *same class* with her husband, or her offspring.

41. It is inferrible from the above passage that where there are several wives, all of classes *different* from that of the husband, the wealth of a wife dying without issue is inherited, not by the damsel of another wife or her offspring, but by the husband alone, where the marriage had taken place in one of the approved forms, such as Bráhma and the like, and, in other cases, by the donor himself.

42. Kátyáyana closes the subject of stridhana by the following verse:—"Thus the law relating to stridhana or woman's property and the partition thereof has been explained."(2)

43. The meaning is, that the law thus expounded and the rules of partition thus detailed relate to stridhana or woman's separate property.

CHAPTER X.

On partition of wealth received through secondary fathers.

1. Manu:—"Not brothers nor parents, but sons inherit the property of their father."(3)

2. Here, the objector says: "Manu has already declared:—'A legitimate son (aurasa) is *alone* the lord of the father's wealth.'(4) This sufficiently indicates the exclusion of brothers and others from the participation of the deceased's wealth. While so, what necessity was there for express exclusion being made of them in the text above quoted. It could not be said that the above text relates to sons *deceased*; for, it would be clearly inconsistent with the plain wording of the text that sons inherit the property of their father."

3. The reply is:—In the sentence "Sons inherit the property of their father," the words "father" and "sons" refer to the secondary father and secondary sons. The meaning hence is this: The sons of the description of kshetraja and the like inherit the property of their respective fathers, [namely, the husband of the woman on whom the kshetraja was procreated and the like,] and not the brothers, &c., of such fathers.

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(1) Manu, ix. 198.
(2) Not found.
(3) Manu, ix. 185.
(4) Manu, ix. 163.

4. The same author [Manu] defines kshetraja and the other classes of secondary sons :—

I.—" He who was begotten, according to law, on the wife of a man deceased, impotent, or degraded, after due authority given to her, is called *kshetraja* or the lawful son of the wife.

II.—He whom his father or mother affectionately gives as a son, being alike [by class] and in a time of distress, confirming the gift with water, is called '*dattrima*' or a son given.

III.—He is considered as '*kritrima*' or a son made, whom a man acquainted with right and wrong takes, the boy being equal in class and endued with filial virtues.

IV.—In whose mansion soever if a male child shall be brought forth, if the real father cannot be discovered, that child is called '*gudhotpanna*' or a son of concealed birth in the house, and belongs to the lord of the wife [by whom the child was secretly conceived].

V.—A boy, whom a man receives as his own son after he has been deserted by both his parents or by either of them, is called an '*apaviddha*,' or a son rejected.

VI.—A son, whom a damsel conceives secretly in the house of her father, is considered as the son of her husband and denominated '*kánina*' or damsel's son, as being born of an unmarried woman.

VII.—If a pregnant young woman marry, whether her pregnancy be known or unknown, the male child in her womb belongs to the bridegroom and is called '*sahodha*' or a son received with his bride.

VIII.—He is called '*krita*' or a son bought, whom a man, for the sake of having issue, purchases from his father and mother, whether the child be equal or unequal to him.

IX.—He whom a woman, either forsaken by her lord or a widow, conceived by a second husband whom she took by her own desire, is called a '*paunarbhava*' or the son of a woman twice married.

X.—He who has lost his parents or has been abandoned by them without just cause, and offers himself to a man [as his son] is called '*svayamdatta*' or a son self-given.

XI.—A son begotten through lust on a Súdrá woman by a Bráhmin is a corpse though living, and is therefore called '*párasava*,' a living corpse.

Thus the learned have named eleven sons [kshetraja being the first of them] in due order as substitutes for a begotten son to secure the performance of religious rites."(1)

Confirming the gift with water]; this indicates the form in which the gift of a son is to be made. We have shewn the law relating to the gift of a son in the chapter " On Donor and Donee."

(1) Manu, ix. 167—180.

In a time of distress] in a time of famine or the like, or where the adopter is in distress from want of issue.

Being alike] the giver and the receiver being both of the same class.

Affectionately] without avarice.

Takes] takes, as a son, one having no guardian.

Whether the child be equal or unequal] equal or unequal in good qualities.

In whose mansion] by the wife in the mansion.

Deserted] deserted because he was born at an inauspicious hour or the like, and not because of degradation.

A corpse though living] a dead son though with life.

As substitutes for a begotten son] as secondary sons.

To secure the performance of religious rites] to prevent failure occurring in the performance of srâddha and other rites, performable by a legitimate son, from want of such a son.

Have named] have named for persons who may apprehend failure of religious rites.

5. The secondary sons thus enumerated had all been recognized as sons in former ages; but, in the Kali age, the adopted son alone is recognized. By the text: "None is to be taken as a son except a son of the body or one who is adopted," the learned have, in the early period of the Kali age, prohibited the recognition of any other son than the legitimate and the adopted, with the view of maintaining virtue in the world.

6. The appointment of a daughter to raise up a son to her father must also be considered by the same text to be prohibited in the Kali age, such a son not being either one of the body or adopted. The conclusion hence is that, in the Kali age, in default of a legitimate son or grandson, the adopted son alone and none else is recognized as a subsidiary son.

7. Even a son of the body does not become a legitimate son when he is born of a wife of an unequal class, the marriage of a woman of an unequal class being in itself prohibited in the Kali age. Accordingly, Dharmajña:—"The marriage of girls of an unequal class by twice-born men." Add to these, "is prohibited by the great in the Kali age, in view to maintain virtue." We have not, therefore, detailed the laws relating to partition of property among sons of unequal classes, secondary sons [an adopted son excepted], appointed daughters, and the sons of such daughters, as it would tend in vain to swell the work, such a partition being in the present age obsolete.

8. Manu, however, declares:—"If, among several brothers of the whole blood, one have a son born, Manu pronounces them all fathers of a male child by means of that son."(1) This text does

(1) Manu, ix, 182.

not actually make the brother of one having issue the father of a child by means of that issue, the law treating him as issue less though his brother has issue. Hence Yájñavalkya, in the text:—"The wife and the daughters, &c.,(1) contemplates a deceased] to be issueless notwithstanding the existence of his brother's son. He further places a brother's son in the line of heirs to the property of an issueless man, *after* the wife, daughter, parents, and brothers.

9. The objector here asks :—"If one were not to be considered a father by reason of his brother having issue, how to reconcile the above text of Manu?" The reply is that, in the chapter treating of persons competent to perform the sráddha and the like, one brother is declared as becoming a father by reason of another giving birth to a child, and this is simply to extol the merits of the issue of the body and is not to be understood in its literal sense any more than the expression "Father [thatha] of the village."

10. Sangrahakára, however, says :—"Where there are several uterine brothers of the same class and one of them begets a son, the rest are considered fathers by means of that son. The same rule holds good where there are several wives. If one of them begets a son, he offers funeral cakes to all the rest."

11. To reconcile this text with what has been already said, Devasvámi construes the passage as follows :—"Because it is said at the conclusion of the treatise [of Sangrahakára] that 'in both the cases, no other son is to be substituted,' it must be understood by the two texts or texts composing the passage, 'where there are several uterine brothers of the same class and one of them begets a son, &c.,' that, where there is a brother's son or the son of a rival wife and he is capable of serving in any way as a substitute for the son of the body, no other son is to be substituted."

12. Hence, in the Kali age, property devolves from the secondary father on the adopted son alone and on no other kind of secondary sons.

13. Manu, on the subject, says :—"Of the man to whom a son has been given, adorned with every virtue, that son shall take the heritage even though brought from a different gotra or family."(2) The particle, '*api*' (*even*) used in the text, indicates that the same is the case where the son adopted belongs to the same gotra or family with the adopter.

14. The substance of the third quarter of the above text is explained by Devasvámi, as follows :—"He, the adopted, takes the whole effects as well as the gotra of the adopter." It must, therefore, be concluded that, by the fact of adoption, the adopted acquires a right over the property of the individual who receives him in adoption, and also gets his [adopter's] gotra or family name. Likewise, the adoption severs the boy from his natural family, and renders him no more the son of his natural father. He is hence

(1) Yájñavalkya, ii. 135. (2) Manu, ix. 141.

excluded from the participation of the wealth of the person who gave him in adoption and also from bearing his family name.

15. Accordingly, it is declared in the following text: "A given son must never claim the family and estate of the natural father."(1)

16. In taking the assets of the adoptive father too, there are certain instances in which the boy adopted does not inherit the *whole* estate. Accordingly, Vasishtha:—"When a son has been adopted, if a legitimate son be afterwards born, the given son shares a fourth part."(2)

17. Vishṇu:—"Among grandsons by different fathers, the allotment of shares is according to the fathers. Each of the grandsons takes that which was his father's property and not the other."(3)

18. If, where, among several brothers, one has a true legitimate son, and the others have sons of the description of kshetraja and the like, and the brothers die in an undivided state, the partition of the grandfather's property then takes place among the principal and secondary sons according to their respective fathers.

19. There too, where the secondary son of a brother has been superseded by a legitimate son subsequently born to the same brother, the former, that is, the secondary son, gets only a fourth part according to the law as already set forth (para. 16).

20. A similar rule is to be observed (*mutatis mutandis*) where some of the brothers only are dead and the others living.

CHAPTER XI.

ON THE ORDER OF SUCCESSION TO THE ESTATE OF ONE DYING WITHOUT MALE ISSUE.

SECTION I.

On the widow's right of succession.

1. Manu:—"The estate of one who leaves no male issue is inherited by the father or by the brother alone [eva]."(4)

2. The literal meaning of this passage is clear; but the purport of it is rather obscure, and it is explained, as follows, by Sangrahakára:—"We now explain by whom the property of one who dies without a son of any description is to be inherited."

3. The meaning of Sangrahakára's passage is this: Where a person possessing estate dies without a son principal or secondary,

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(1) Manu, ix, 142.
(2) Vasishtha, xv. 9.
(3) Vishṇu, xvii. 23.
(4) Manu, ix. 185.

then, that is, after the death of such person, if it be asked who inherits his estate, Manu declares that it is to be inherited by the father or the like. But the word "now," used in the text of Sangrahakára, shews that the passage of Manu is applicable only to a case in which there may exist no nearer relation of the deceased capable of conferring manifold benefits on him than the father and the like. Sangrahakára, therefore, bearing in mind that secondary sons are nearer relations of the deceased than the father and the like, construes the passage: "The estate of one who leaves no male issue is inherited by the father, &c.," as referring to one destitute of sons of *any* description. This is unobjectionable. As secondary sons are better competent to confer benefits temporal and spiritual on the deceased than the father and the like, and are hence his nearer relations, so are widows also (as appears from a careful examination of the Vedas, Smritis, &c.) better competent to confer benefits temporal and spiritual on the deceased than the father and like, and are therefore his nearer relations compared with the father and the rest. It is hence inferrible that Manu declared the estate of a sonless man inheritable by the father, *in default of even the widow.*

4. Brihaspati, therefore, observing that wives are more closely allied to the deceased than any one else by reason of their conferring benefits temporal and spiritual on him, holds, by the following passage, that the widows alone are entitled to inheritance in default of secondary sons, notwithstanding the existence of the father and relations as far as sakulyas. "In the Vedas and in the Code of law, as well as in popular practice, a wife is declared by the wise to be half the body of her husband, equally sharing the fruits of pure and impure acts. Of him whose wife is not deceased, half the body survives; how then should another take his property while half his person is alive? The widow (patni) of a deceased man who left no male issue takes his share, notwithstanding kinsmen, a father, a mother, or uterine brother, be present."(1)

5. By the second hemistich of the above passage, the superiority of a widow to the father and the like, in point of competency to procure for the deceased benefits temporal and spiritual, has been demonstrated.

6. That a wife is half the body of her husband, is pointed out in the following passage of the Veda: "She who is a wife (patni) is half of her husband's body (átmanah) itself." The word 'átmanah' means "of the body." The substance of this passage is, that a wife confers so much benefit temporal and spiritual on her husband as half of his own body does.

7. In the Code of law, that is, in the Dharma Sastra, it is laid down thus: "Of him whose wife drinks wine, half the body sinks. In the case of him, half whose body has sunk, no expiation is prescribed."

(1) Brihaspati, xxv. 46—48.

8. In popular practice, *i.e.* in the Sastra exhibiting the laws sanctioned by popular usage, it is provided: "Which learned will renounce a wife who is half of the body?"

9. Equally sharing the fruits of pure and impure acts] this is because a wife (patni) possesses power to associate with her husband in the performance of religious rites. Who left no male issue] who left no son, principal or secondary.

The wife "patni," means a wife lawfully wedded in one of the approved forms of marriage, Bráhma or the like, capable of conferring on the wife a power to associate with her husband in the performance of religious sacrifices; it being also declared by Pánini that "the term patni 'wife,' anomalously derived from pati 'husband,' is employed when connection with sacrifices (meaning religious rites) is indicated." The term 'patni' applies to a wife of no other kind.

10. Hence a wife bought (as in Ásura marriage, &c.) is not called "patni," there not being in her that connection with religious rites which is essential to a "patni." Accordingly, in another Smriti: "That woman who has been purchased for value paid is not styled a 'patni';—she associates neither in rites relating to deities, nor in rites relating to the manes. The learned call her a slave (dási)."

11. When a wife is not a "patni," she is capable of conferring temporal benefits only. In order to show that a wife, not being a "patni" is incapable of conferring spiritual benefits, it is said that the learned call such a wife a slave or "dási."

12. Hence, by the term "patni" being used in the text (para. 4) of Brihaspati above quoted, before the phrase "takes his share," it is shewn that, to entitle a widow to inherit the estate of her husband, it is essential that she should have been capable to perform the rites relating to the manes and the like.

Prájápati, therefore, points out, by the following passage, that to such a "patni" alone, the right of inheritance attaches, as is capable of maintaining by her chastity the religious rites prescribed by both the Vedas and the Code of Law. "Dying before her husband, a chaste woman [nári] partakes of his consecrated fire [Agnihotra], or if her husband die [before her], she shares his wealth. This is a primeval law."(1)

By the word "Agnihotra" used in the text, is meant the fire belonging to the consecrated hearth.

A chaste woman] a virtuous woman or one that lives with her husband, associating with him in the performance of rites ordained by the Sruti and Smriti, and observing fastings and other religious ceremonies.

13. The term "woman" [nári] used in the above text of Prajápati, means a wife of the rank of patni. That she is such a

(1) Found in Brihaspati, xxv. 49.

wife is apparent from her being said to be the partaker of consecrated fire.

14. To a wife competent to associate with her husband in the performance of religious rites, Brihaspati gives perference over the brother and the like in point of performing the rites relating to the manes. "On failure of a son, a wife [patni], and on failure of a wife, a uterine brother."(1)

15. On the subject, Vriddha Manu:—"The widow [patni] of a childless man, keeping unsullied her husband's bed, and persevering in religious observance, shall alone present his funeral oblations and obtain also his entire share."(2)

16. In the second hemistich of the passage, an inverse order in point of construction must be observed. It must be construed that a patni possessing the qualifications referred to, ought exclusively to take, first, the whole estate of her husband and then offer his funeral oblations; and that, during her life-time, neither the brother nor the rest are competent either to take the inheritance or to perform the obsequies.

17. Keeping unsullied her husband's bed] being chaste. Persevering in religious observances] practising religious ceremonies even during the life-time of the husband with the husband's permission, it being declared by Sankha and Likhita: "The duty of a wife is to commence wilfully the religious observances, fastings, sacrifices, &c., with the permission of her husband."

18. It is hence to be understood that the author of the passage indirectly points out that a patni, to inherit her husband's estate, must also be a pious woman.

19. The words "obtain also" have been used in the above text, para. 15, of Vriddha Manu, to show that a patni who, by reason of her marriage, acquired ownership but of a dependent character over the entire property of her husband, obtains, on his death, independent power over it.

20. In the following passage of Prajápati, the meaning of the words "funeral oblations" and "entire" used in the above text of Vriddha Manu, para. 15, has been explained:—"Having taken his moveable and immoveable property, the precious and the base metals, the grains, the liquids and the clothes, let her duly offer his monthly, half-yearly, and other sráddhas. With presents offered to his manes and by pious liberality, let her honour the paternal uncle of her husband, his spiritual parents (Guru), and daughter's sons, the children of his sisters, his maternal uncles, and also aged and unprotected persons and guests."(3)

Base metals] brass, lead, and the like. With presents offered to his manes] with boiled rice offered in honour of departed ances-

(1) Brihaspati, xxv. 65. (2) II. Cole. Dig., 535, ccccviii.
(3) Brihaspati, xxv. 50 and 51.

tors. By pious liberality] by presents, &c., made for the construction of wells, tanks, and the like.

21. The rule hence inculcated is, that a patni having taken the entire property of her husband inclusive of immoveables, must, in proportion to the wealth derived by her and in presence of the spiritual counsellors and priests of her deceased husband, perform acts [within the competence of a female to perform] calculated to increase the spiritual prosperity of herself and of her lord; such as making srâddhas, digging wells, &c., and giving presents, all requiring for their accomplishment pecuniary aid.

22. Some, however, say that the wealth inherited by a widow [patni] is not enjoyed by the worthy relations of her husband and does not prove beneficial to him, and that, consequently, the heritage becomes useless, and the widow is not hence entitled to inherit all the property of her husband. But, this opinion is to be rejected as groundless.

23. The right of a widow [patni] to inherit arises only where the husband dies divided in estate. Accordingly, Brihaspati:—"Whatever property a man possesses of every kind after division, whether mortgaged or other, the wife [jáyá] shall take after the death of her husband, with the exception of immoveable property."(1)

24. The purport of the text is, whatever is the property of a deceased husband, whether consisting of moveables or immoveables, whether pledged or otherwise, the widow alone takes, where the husband was a divided member of the family.

25. From its being laid down that a widow becomes entitled to succeed where the husband dies *divided*, it is understood that where the husband dies *undivided*, his father, brother, or the like, who lived in union with him takes the property of the issueless man. The word "jáyá," used in the above text of Brihaspati, means a wife (patni).

With the exception of immoveable property, this exception is applicable to a patni who has not even a daughter, for if it were to be held applicable to every widow generally, the passage would be inconsistent with that of Prajápati: "Having taken his moveable and immoveable property, the precious and base metals, the grains, the liquids, and the clothes, &c.," para. 20.

26. The consistency *cannot* be attempted to be removed by saying that the text of Brihaspati is applicable to a case where the husband dies undivided, or where the widow does not lead a virtuous life.

27. To prevent any such construction being put upon the passage, the same author has stated:—"Even if virtuous and if partition have been made, a woman is not fit to enjoy immoveable property."(2) The object of this passage is to explain that immoveable property being the means of subsistence among the

(1) Brihaspati, xxv. 53. (2) Brihaspati, xxv. 54.

descendants of a Hindu family, is inheritable only by a widow that has got issue, and that, therefore, a widow [patni] having no issue has no title to inherit the property although she may be virtuous and the family divided.

28. The same author further says :—" After the death of the husband, the widow preserving [the honour of] the family, shall obtain the share of her husband so long as she lives; but she has not property [therein to the extent of] gift, mortgage, or sale."(1)

Preserving the honour of the family] preserving the honour of the line, or, in other words, virtuous.

29. The competency of a widow to make gifts for religious and charitable purposes, such as the maintenance of old and helpless persons, being sanctioned by law, the above passage must be held as contemplating the want of independence of a widow in making gifts, &c., for purposes not being religious or charitable, but purely temporal, such as gifts to dancers, and the like.

30. A widow thus possesses independent power to make gifts for religious objects, and, therefore, the same author enjoins, by the following passage, the constant presentation of gifts, by a widow for religious purposes. " A widow actively engaged in meritorious observances and fasts, constant in the duties of her widowhood, making daily religious gifts, even if wanting a son, shall reach the heavenly abodes."(2)

31. The daily making of religious gifts, as directed in the above passage, would be impracticable, if the widow were held to possess no independent power. It is hence to be understood that the law does not deny the independent power of a widow even to make a mortgage or sale, for the purpose of providing herself with funds necessary for the discharge of religious duties.

32. Kátyáyana declares : " Let the sonless widow, preserving unsullied the bed of her lord and abiding with her venerable protector Guru, enjoy with moderation the property until her death. After her, let the heirs take it."(3)

With moderation] patient of the control which the relations of her deceased husband may exercise over her in the disposal of wealth.

33. This passage is applicable to the case of undivided wealth which a widow (patni) may herself take on account of her subsistence in consequence of her father-in-law and the like not being qualified to maintain her or continuing engaged in other concerns. If, on the contrary, the above passage were held to refer to divided wealth, it would become opposed to the ascertained principle of the text (para. 15) of Vriddha Manu and others.

34. When the father-in-law and the like are qualified to maintain the widow and take themselves the property of the deceased undivided member of the family, they alone are to maintain

(1) Not found in Brihaspati. (2) Brihaspati, xxiv 10.
(3) H. Cole. Dig., 595, ccccIxxvii.

the widow from the property so taken. Accordingly, Nárada :—"Whichever wife (patni) becomes a widow and continues virtuous, she is entitled to be provided with food and raiment by the elder brother of the deceased or by her father-in-law or by a gotraja, (a member born in the same family) or any other person."(1)

In order to maintain the widow, the elder brother, or any of the others above mentioned, must have taken the property of the deceased; the duty of maintaining the widow being dependent on taking the property.

35. Kátyáyana lays down an additional rule on the subject :—"But if her husband have departed for heaven, the widow obtains food and raiment; or [thu] she receives a share of the undivided wealth [dhana] so long as she lives."(2)

A share of the undivided wealth] such a share as would be necessary for subsistence without distress and for the performance of religious ceremonies [daily and occasional] within the competency of a female to perform, and requiring for their completion pecuniary aid.

36. The particle "*thu*" used in the text has the sense of *va* "or," and indicates an alternative. The second hemistich of the passage must therefore be read : "Or she receives a share of the [undivided] wealth [dhana]."

37. The term "dhana" used in the text being simply indicative of *property* of any nature capable of affording the means of subsistence, &c., a portion of the landed property belonging to the family, yielding an income equal to the share of wealth above prescribed, may be assigned in lieu of *the share of the undivided wealth*.

38. The course provided in the first hemistich of the above text, para. 35 of Kátyáyana, namely, that of receiving food and raiment, refers to a widow not being a patni, the law providing, in her case, a small share of wealth only sufficient for maintenance.

39. Nárada declares what is the minimum rate of maintenance payable in kind and in money. "A virtuous woman whose husband has died, receives every year a maintenance of 34 ádhakas and 40 panas". 192 measures [prastha] of grain make an ádhaka. Pana, is one of the Karsha standard.

40. In some countries, a pana is considered as forming the eightieth part of a nishka [a gold coin]. Therefore, wherever pana is not current, one-eightieth part of a nishka must be taken as the standard equal to a pana.

41. Brihaspati, premising "Where partition had been made,' says :—"Either food or a portion of the landed property may be given at will."(3)

42. The purport of the text is, that in the case of a divided family, where the widow is not a patni, entitled to inherit the

(1) Not found in Nárada. (2) Not found.

(3) Brihaspati, xxv. 54.

property of her husband, she may, at the pleasure of the giver, receive either food and raiment to the extent specified [in para. 39] or a portion of the landed property capable of yielding an income equal to the share of wealth [referred to in para. 35].

43. The particle "*eva*" used in the text indicates that the assignment of such maintenance is imperative. The course first mentioned [that is, giving food and raiment to the extent specified in para. 39] is applicable to a widow that does not do service to her father-in-law and the like. This will be seen in a subsequent passage also [para. 46].

44. The same author further declares, by the following passage, that the assignment made by one for maintenance is to be kept up by the others also. "What has been given to a widow by means of landed property for her maintenance by her father-in-law, the others are not competent to resume on the death of the father-in-law."(1)

45. The term "father-in-law" has been used in the text to indicate the giver of maintenance in general, and the words "landed property" include wealth of any description given for maintenance. It is hence to be understood that a maintenance assigned to a widow, even if it should consist of wealth [moveables], cannot be resumed by others.

46. Kátyáyana, however, says that it is, in some instances, resumable: "She who is firmly engaged in doing service to her Guru [that is, father-in-law and the like] is fit to enjoy the share assigned. Should she not perform the service, he shall order her only clothes and a morsel of food."(2) In the latter case, it must be assumed that the share assigned for maintenance is to be resumed.

47. The same author also declares that the share assigned for maintenance is resumable even where the widow is addicted to a vicious course. "A widow who does injurious acts, who has no sense of shame, who squanders away the money, and who is bent upon committing adultery, is held unworthy of wealth [dhana]."(3)

Wealth] wealth or a share of land assigned for maintenance, &c. The meaning is that a widow, subject to any of the four vices above described, is not entitled to enjoy the maintenance so allotted. The term "dhana" (wealth), used in the text, refers also to food and raiment.

48. Hence, Nárada:—"Let them allow a maintenance to his women for life, provided these preserve unsullied the bed of their lord. But if they behave otherwise, that allowance may be resumed."(4)

If they behave otherwise] if they pursue an incontinent course.

(1) Brihaspati, xxv. 86.
(2) Not found.
(3) II. Cole. Dig., 602, ccccIxxxiv.
(4) Nárada, xiii. 26.

That allowance] wealth consisting of grain, cloths, and money, assigned for food and raiment.

May be resumed] may be taken back.

49. The text of Manu, which declares: "The same rule applies to women [yoshit] even if they are degraded. Food and raiment are to be given to them and they are to remain in a corner of the house,"(1) is applicable to a case where a wife has to be maintained *by the husband*. This appears from the first hemistich of the text. Hence there is no inconsistency between this and the text of Nárada above quoted.

50. Where a widow is suspected of incontinence the mode prescribed by Hárita is to be adopted even where the widow is of the rank of a patni and belongs to a divided family. "If a woman, becoming a widow in her youth, be headstrong, a maintenance must, in that case, be given to her for the support of life."(2)

Headstrong] cruel, obstinate, and one against whom there is a presumption of incontinence.

51. The following is a passage of Manu which bears an appearance of inconsistency with the text of Vriddha Manu, para. 15, holding the widow (patni) entitled exclusively to obtain her husband's entire share. "Should the eldest or youngest of several brothers be deprived of his allotment at the distribution or should any one of them die, his share shall not be lost; but the uterine brothers and sisters and such as were re-united after a separation shall assemble together and divide his share equally."(3)

Be deprived of] be deprived either by degradation or by entering the fourth order.

52. Nárada too, after premising "Whatever is the share of re-united parceners goes to themselves," says: "Among brothers, if any one die without issue or enter a religious order, let the rest of the brothers divide his wealth except the wife's separate property."(4)

53. The above two passages, namely, those of Manu and Nárada are, it is clear, applicable to the case of the wealth of *re-united parceners*. Hence, they are not inconsistent.

54. In conclusion, it is to be understood, that the law allowing a patni to take the entire share of her husband, is applicable to the case of a parcener dying divided *and without re-union*. Accordingly, Sangrahakára: "Where brothers were divided and not re-united, the widow (patni), abiding by the directions of her Guru in respect of appointment, takes the wealth."

55. The principle of Dháresvara, which imposes upon a widow inheriting the wealth of her husband the condition that she should abide by the direction of her Guru in respect of appointment, must be discarded as being strongly reprobated by Visvarùpa and

(1) Manu, xi. 189.
(2) II. Cole. Dig., 536, ccccix.
(3) Manu, ix. 211 and 212.
(4) Nárada, xiii. 25.

others. Therefore, in the case contemplated by Sangrahakára the only rule that can be recognised is that the qualifications described by Vriddha Manu, para. 15, are all that are required in a female to entitle her to inherit the whole estate.

56. It is laid down in the Sruti: "Therefore, females and persons wanting in an organ of sense or member are incompetent to inherit."(3) The text, para. 15, of Vriddha Manu, above quoted, is not affected even by this Sruti. In the first place, the term "females" being used in the Sruti, together with *sons* wanting in an organ of sense or member, it may be supposed that the females referred to in it are *daughters*. Even granting that the term "females," as used in it, applies to every kind of females (whether a daughter or not), the Sruti in question is merely an exaggeration and refers consequently to females other than patni and the like, whose competency to inherit has been *expressly* provided for. Thus all is unexceptionable.

57. Where there are several widows (patnis), it is proper that they should all take the inheritance of their sonless husband by dividing the same in equal shares among them.

58. Prájápati, by the following passage, provides that the king is to chastise those that injure the inheritance, which, as has been ascertained on an examination of all the Smritis, devolves on a patni. "Those near or distant kinsmen, who, becoming her opponents, injure the property of a woman, let the king chastise with the punishment meted out to a robber."(4)

SECTION II.

On the right of the daughter and daughter's son.

1. Brihaspati:—"The wife is pronounced successor to the wealth of her husband: and, in her default, the daughter."(5)

In her default] on failure of the wife.

2. Hence, Vishṇu: "The wealth of an issueless man goes to the widow, and in her default, to the daughter."(6)

3. Brihaspati explains the reason of such order: "As a son, so does the daughter of a man proceed from his several limbs. How, then, should any other person take her father's wealth?"(7)

4. By springing from the limbs of the father, a daughter is equal to a son. The difference, however, is this. In the procreation of a son, the contribution of the father's part is greater; whereas, in that of a daughter, it is less, it being declared: "A male child is procreated, if the seed predominate, but a female child is procreated if the woman contribute most to the fœtus." Hence a daughter is pronounced 'equal to a certain extent.'

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(1) Not found.
(2) II. Cole. Dig., 542, ccccxvi.
(3) Brihaspati, xxv. 55.
(4) Vishṇu, xvii. 4 and 5.
(5) Brihaspati, xxv. 56.

5. Any other person] ; these words, which are used in the text, para. 3, above quoted, exclude the son and the widow, who are preferable heirs, and include the father and the like.

6. The purport of the text of Brihaspati is this: how could these persons, *i.e.* the father and the like, take the property of a sonless man, while the daughter is alive ?

7. Accordingly, Manu :—"The son of a man is even as himself, and the daughter is equal to the son. How, then, can any other inherit his property, notwithstanding the survival of her, who is, as it were, himself ?"(1)

Who is as it were himself] who is equal to the son, who is as it were himself.

8. The objector says: No reason has been adduced to show why the right of succession of a daughter should be postponed to that of *a secondary son* and *widow ;* the reason stated by Brihaspati (in para. 3) simply accounts for her title to succeed *on failure of a begotten son.* This is true, but Brihaspati, in giving the reason, intends that the same must be taken to apply where a daughter succeeds in default of a secondary son and widow.

9. Nárada, conscious of the justness of the proposition, that a daughter should succeed on failure of a secondary son and widow, says, for the information of the uninstructed : "On failure of male issue, the daughter inherits, for she is equally a cause of perpetuating the race."(2) The reason why the daughter is equally a cause of perpetuating the race, the same author explains by saying "since both the son and daughter are the means of prolonging the father's line."

10. The meaning is, that the son and daughter both give birth to children, by whom the prosperity of their own parents is promoted. Here the equality contemplated between a son's son and a daughter's son must be understood to be an equality *in point of efficacy*, both the sons being *in their nature*, unequal. There is no equality between them in point of clearing off the debts and inheriting the assets of the deceased ; it being declared "Debts must be paid by sons and sons' sons."(3) Referring to a grandfather's property, it has further been declared : "The ownership of the father and son is the same in it."(4) The superiority of a son's son being, by these texts, declared in respect of assets and debts, the equality contemplated by the text of Nárada, above quoted, between a son's son and a daughter's son must be understood to consist in conferring benefits not temporal, that is, in the performance of srâddhas ; it being declared by Vishnu : "In offering oblations to the manes, the daughters' sons are considered as sons' sons."(5) The daughters, therefore, stand conspicuous in the line of succession by reason of their conferring benefits by means of their descendants.

(1) Manu, ix. 130.
(2) Nárada, xiii. 50.
(3) Yájñavalkya, ii. 50.
(4) *Ibid*, ii. 121.
(5) Vishṇu, xv. 47.

11. It cannot, however, be hence said, that where there is no male issue, the daughter inherits in preference to a widow (patni); the latter being in her own person competent to associate in the performance of religious sacrifices (Agnihotra), &c., which are acts capable of conferring spiritual benefits on the deceased. Therefore, the term "male issue" used in the passage "on failure of male issue, the daughter inherits, para. 9," must be considered by synecdoche to include a patni (widow) also.

12. The objector says, the father, by performing sráddha to the deceased son, is personally capable of conferring on him benefits spiritual, and is hence preferable to a daughter. It may therefore be said that, in default of a widow, the text: "The estate of one who leaves no male issue is inherited by the father"(1) applies. How, under this circumstance, could the daughter be said to inherit in preference to a father?

13. Reply. This is not right. The passage "how, then, can any other inherit his property, notwithstanding the survival of her, who is as it were himself, para. 7," is in itself sufficient to meet his objection. Although the daughter, when compared with the father, is somewhat inferior in her capability to confer spiritual benefits on the deceased, yet, in point of consanguinity, she is more closely connected with him. Thus, on both these grounds, she is certainly preferable.

14. The objector again says: If so, let it be declared that in default of a daughter, the text: "The estate of one who leaves no male issue is inherited by the father" applies.

15. No, it cannot apply here too. A daughter's son being the offspring of a daughter, is more nearly connected with the deceased than a father. Vishṇu, too, has declared: "Where there exists no son or grandson, the daughter's son inherits the wealth. In offering oblations to the departed ancestors, the daughter's sons are considered as son's sons."(2)

16. Dháresvara, Devasvámi, and Devaráta, are of opinion that the texts of Brihaspati and others which propound the daughter's title to succession in default of the widow refer to an *appointed* daughter (*putriká*). But their opinion is, it must be observed, the result of the high opinion which they entertain of their own knowledge of the sacred codes of law, and must be understood to have been rejected by Brihaspati and the other authors themselves, because of their advancing arguments in their respective texts in favour of the daughter's title to inheritance.

17. Vasishtha says: "The appointed daughter is considered to be the third description of sons."(3) The appointed daughter thus ranking herself among secondary sons is entitled, like the kshetraja (son of the wife) and the like, to inherit the property of her father on failure of a begotten son even though the widow

(1) Manu, ix. 185. (2) Vishṇu, xv. 47.

(3) Vasishtha, xvii. 15.

should be alive. This is under the text: "Not brothers nor parents, but *sons* inherit the property of their father."(1) While thus, an appointed daughter is entitled to succession even in preference to a widow, her inheriting the wealth on failure of a widow must be unquestionable on the analogy of the loaf and staff(*a*). Under this circumstance, what necessity was there for Brihaspati and others to have adduced *reasons* for a daughter's succession *after* a widow? By this alone, the opinions of Dháresvara and others, above quoted, would clearly appear to have been rejected by Brihaspati and the other authors. It is therefore unnecessary for us to make any further attempt to upset the opinion.

18. The objector says: Nárada referring to a sonless widow declares, "the maintenance of the daughter of such a widow is enjoined to be made out of her father's share for which, she will take a share until she is initiated. After that, her husband shall support her."(2) The meaning of the passage is this. If a deceased sonless widow should leave a daughter, then the father's wealth must be considered as intended for the subsistence of such a daughter. Therefore, the daughter, till her marriage, enjoys her father's wealth for the sake of her support only. She is not competent to use or alienate it at pleasure. Hence, it would appear that, as a rule, all unmarried daughters, in default of the mother and brother (that is, the widow and son of the deceased) do not *inherit* (but simply enjoy for the sake of subsistence till marriage only) their father's wealth. The texts, therefore, which, as an exception to the above rule, hold a daughter competent to *inherit* must be considered as referring to an *appointed daughter*, for, if they were to be held to apply to all daughters generally, the application of the exceptional passages would become as universal as that of the rule itself; they could, therefore, be no longer called exceptional passages, and would become consequently meaningless. Hence, the opinion of Dháresvara and others must be adhered to.

19. Reply. The above objection would be sound, if the text of Nárada were applicable to a divided family; but a careful examination of the text clearly shews that it refers to a re-united family. Therefore, all the passages which, in the case of a divided family, allow inheritance to daughters, must be considered to be general and not exceptional passages, and to suppose that they are applicable only to the case of an appointed daughter, there is not the slightest ground. This much is sufficient to meet the objector's argument.

20. Kátyáyana, however, draws a distinction in the succession of daughters to their father's wealth as enjoined by the above passages. "Let the widow succeed to her husband's wealth, provided she be chaste, and in default of her, the daughter inherits if *unmarried* or *unprovided*."(3)

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(1) Manu, ix. 185. (2) Nárada, xiii. 27.

(3) Not Found.

(*a*) *Vide* note (*a*), page 26 of this volume.

21. By this, it is inferrible that the above passages have reference to daughters either unmarried or unprovided. "Unprovided" here means unprovided with wealth and not unprovided with offspring, such as barren daughters and the like, for daughters of the latter description are not at all entitled to inherit their deceased father's estate, they being incapable to confer on him benefits spiritual through the medium of their offspring.

"In default of her" means here not in default of a patni generally, but in default of that kind of patni, who is not tainted with incontinence.

22. It must hence be understood that a daughter is entitled to succession not on failure of a patni generally, but on failure of a patni possessed of continence. Hence Sangrahakára: "An appointed daughter inherits in default of *such* a wife."

23. The meaning is, that an appointed daughter inherits not on failure of a patni generally, but on failure of a patni possessing the qualifications described as essential to taking the heritage.

24. As for that portion of Sangrahakára's text which says that an *appointed* daughter inherits, it must be overlooked as being already discarded.

25. Some, however, say, that on failure of a patni, generally the estate goes to the daughter and on failure of a patni possessing the special qualifications essential to inheritance, the estate goes to the father and the like under the text "the estate of one who leaves no male issue is inherited by the father, &c." This opinion is also to be rejected for the same reason as above noticed.

26. Brihaspati describes the qualifications necessary in a daughter inheriting property *after a widow* and also those necessary in a daughter inheriting *after a chief or begotten son*. "Being of equal class and married to a man of like caste, being virtuous and devoted to obedience, and being formally appointed or not appointed to continue the male line, she shall take the property of her father."(1)

27. Being of equal class] being of the same class with the father, *i.e.*, born of a wife of the same class with the father.

The four epithets first mentioned in the above passage, refer to a daughter claiming inheritance *after* a widow, and the two epithets (being formally appointed or not appointed) last mentioned, to a daughter claiming inheritance *before* a widow.

Being formally appointed or not appointed to continue the male line]; here an appointed daughter, (whether formally appointed or not,) must be understood.

The term "daughter" (which has not been expressly mentioned in the passage) must be understood before the other four epithets.

(1) Brihaspati, xxv. 57.

The particle "*va*" (or) is used in the passage to denote an alternative. Hence the meaning of the passage is, as follows: The estate of one destitute of a begotten son or son's son is inherited *before* a widow by an appointed daughter of either of the two kinds above mentioned, *i.e.* (whether formally appointed or not appointed); but other daughters being of equal class and possessing the other three qualifications next mentioned in the passage, inherit the estate *after* the widow.

28. The conclusion therefore is, where there is a competition between a daughter unprovided and one unmarried, both being of the same class with their father, and possessing the other qualifications mentioned in the text, the unmarried alone first takes, the maintenance of such daughters out of the wealth of the father being indispensable. On failure of such a daughter, the unprovided takes, such a daughter being destitute of the means of subsistence, owing to the inability on the part of her husband to maintain her, although he is bound to do so. In default of unprovided daughters, the daughter provided or enriched and possessing the qualifications of equality of class, &c., takes, such a daughter, though provided, being competent to inherit. On failure of daughters, the daughter's son inherits, he being the offspring of the daughter.

SECTION III.

On the right of succession of parents.

1. On failure of the daughter's son, none being more nearly related to the deceased than the father, the text: "The estate of one who leaves no male issue is inherited by the father"(1) here applies, and the wealth accordingly becomes inheritable by the father. Likewise, on this very occasion, none being more nearly related to the deceased than the mother, the text: "Of a son dying childless (and leaving no widow) the mother shall take the estate"(2) also applies, and the wealth becomes inheritable by the mother. Therefore Yájñavalkya says: "The wife and the daughters also, *both parents* (pitarau), brothers, *&c.*"(3)

2. The particle "*cha*" (also) used in the text, indicates that it is only after the daughter's son that the mother and the father simultaneously succeed to the estate. The opinion of Yajñavalkya must be understood to be that there is no good ground for giving precedence to one over the other as between the parents.

3. Some that think themselves learned, in ignorance of the above view, argue that because a mother confers greater benefits on the son by bearing the child in her womb and nurturing him during his infancy, and because it is declared that "a mother surpasses a thousand fathers in point of veneration,"(4) the mother alone succeeds to the estate notwithstanding the existence of the father.

(1) Manu, ix. 185.
(2) *Ibid*, ix. 247.
(3) Yájñavalkya, ii. 135.
(4) II. Cole. Dig., 551.

This argument, however, is not sufficient to justify the mother's claim to succeed in preference to the father; the father, too, contributing in several ways to the good of the son, and imparting learning to him; and it being also declared: "But of those two, the father is pre-eminent, because the seed is considered important."(1)

4. Others argue in a different way. They say that the father is a common parent to the sons of a rival wife also, but the mother is not so; and that hence the mother's propinquity is greater than the father's. This argument, too, is a mere prattle, as between a mother and a father, there can be no distinction in respect of propinquity to the son. By reason of the father being a common parent to many sons, his affection towards each son, founded on direct consanguinity, is in no way diminished.

5. The same authors further argue that as the word "mother" stands first in the regular compound (mátá-pitarau) "mother and father" when not reduced to the simpler form "pitarau" "parents" (by the omission of one term and retention of the other, ekasesha), the mother takes the estate in the first instance. This is also an insipid argument; for, in the instance of the phrase: "The two sacrifices 'Sárasvataú,'" it has been shewn in the fifth chapter of Mimámsá, that there is no rule apparent in the phrase itself as to the order in which the above two sacrifices are to take place, but that they are to be performed in the order in which they have been set forth in the enumeration of sacrifices. No order is thus observed in the performance of the sacrifices with reference to the word which stands first in the phrase into which the complex term "Sárasvataú" is resolvable. Accordingly, in the present instance also, the order of the terms in the phrase into which the complex term "pitarau" is resolvable, is not sufficient in itself to accord a priority of claim to the mother.

6. Srikara propounds that both the parents may divide between them and take the inheritance. This is also improper; the texts (para. 1): "The estate of one who leaves no male issue is inherited by the father" and "Of a son dying childless (and leaving no widow) the mother shall take the estate," conferring on the father and mother, respectively, rights quite independent of each other, as is the case with the sacrifices of paddy and barley.

7. A third class of authors advocate the greater propinquity of the mother, by saying that such propinquity is inferrible from the text: "[The property] of a uterine brother (is taken by) the uterine brother,"(2) by which the share of a uterine brother is said to go to his uterine relation by reason of community of womb. This, however, is leaning for support on a kusa grass. One may be more attached to his uterine brother than to his brother by a different mother; but what superiority could a mother possess over

(1) II. Cole, Dig., 551. (2) Yájñavalkya, ii. 138.

the father in respect of propinquity of relationship to the son, we are unable to conceive.

8. Therefore, if it be asked here, what is the order of succession where both the parents are alive, it is necessary that the order should be stated. Samboo, however, says that no order need be stated, for whatever is taken by either of the two parents out of the common property is for the benefit of both of them. This is not right. Whatever the mother takes, she takes for herself like the stridhana called "Adhyagni" and the like, and not for the benefit of both herself and her husband. Therefore, an order in their succession must certainly be stated.

9. We now proceed to state it. There being no reason for giving preference to one over the other, the precept alone must be relied upon in the matter. The law gives priority of succession to the father. Brihat Vishṇu, premising that the wealth of a sonless man goes to the widow, and in default, to the daughter, says: "In default, to the *father*, and in default, to the *mother*."(1)

10. Although, in this passage, the father is said to inherit the property of a sonless man, in default of the daughter, yet, as reasons have already been shewn why the daughter's son should inherit in default of the daughter, it must be understood that the succession of a father does not come in until the failure of daughter's sons. It must be further noticed that a daughter's son being connected with the line of the daughter herself, a separate mention of him in the order of heirs was considered unnecessary by Brihat Vishṇu.

SECTION IV.

On the right of succession of brothers.

1. On failure of the mother, the property devolves on the uterine brother, his propinquity to the deceased being greater by reason of both of them having been born of the same mother.

2. On failure of the uterine brother, the wealth goes to the half-brother or brother by a different mother.

3. Therefore, Yájñavalkya, in his order of succession, which is founded on reason, says: "Both parents, brothers likewise."(2)

4. The word "brothers" refers, in the first place, to uterine brothers, they being more nearly related to the deceased than a half-brother.

5. The rule of Yájñavalkya hence is, that the wealth of a sonless man goes, on failure of a mother, to a uterine brother. The same author, by the use of the general term "brothers," while the mention of only "a uterine brother" would have been sufficient, must be understood to have laid down the further rule that,

(1) Yájñavalkya, ii. 135. (2) Vishṇu, xvii. 6 and 7.

in default of a uterine brother, a brother of the half-blood, that is, by a different mother, succeeds. There are, however, exceptions to the above rule in two instances, which will be presently noticed.

6. Kátyáyana:—"If a divided member should die, his wealth, in default of male issue, will be taken by the father, or brother or mother, or then [atha] father's mother, in due order."(1)

Father's mother] mother of the father of the deceased divided son, or, in other words, his grandmother.

7. The phrase "in default of male issue" has been used to denote the failure of persons more nearly related to the deceased than the father. The meaning hence is that, in default of heirs ranging from the son to the daughter's son, who are more nearly related to the deceased than the father, by reason of their conferring on him benefits temporal and spiritual, the father takes the estate in the first instance.

8. The particle "*va*" [or] which has been thrice used in the above passage, indicates an alternative and has reference to defaults occurring among heirs; a vested interest such as "svámyam" [ownership] not being capable of existing at one and the same time in one or the other of the heirs [enumerated] indiscriminately, on the principle that a thing cannot have an indeterminate existence.

9. Hence, the substance of the passage is this. In default of the father, the brother inherits; in default of him, the mother; in default of her, the grandmother, The phrase "in due order," used in the passage, means in the order stated.

10. Manu, too, likewise, in the instance of a deceased divided member, having by the use of the phrase "without male issue" adverted to the absence of a son, widow, daughter, and daughter's son who are all more nearly related to the deceased, propounds the succession of the father, brother, mother and grandmother by a verse and a half. "Of him who leaves no son, the father shall take the inheritance, or the brothers. Of a son who dies without issue, the mother shall take the inheritance, and the mother also being dead, the father's mother shall take the heritage."(2)

11. The phrase "without issue" is here indicative of the absence of the son, widow, daughter, and daughter's son.

12. It cannot be supposed that the above texts of Kátyáyana and Manu, shewing as they do, the compact series of heirs from the father to the grandmother, are not the *results* of *reasoning* on the ground that they are inconsistent with the order laid down in the text [para. 3] of Yájñavalkya, which is founded on reasoning.

13. Some say that the text of Yájñavalkya is the only precept shewing the *order* of heirs; it being expressly declared at the conclusion of the passage: "On failure of the first among these, the next in order is indeed heir;"(3) and that therefore the texts: "Of

(1) II. Colc. Dig., 552, ccccxxv. (2) Manu, ix. 185 and 217.
(3) Yájñavalkya, ii. 136.

him who leaves no son, the father shall take the inheritance," &c., which are inconsistent with the above text of Yájñavalkya, are intended merely to enumerate the heirs and not to show their order of succession. This objection is also to be overlooked; the order of succession being expressly indicated in the above texts of Kátyáyana and Manu by the use, in the former, of the phrase "in due order," and in the latter, of the phrase "and the mother also being dead."

14. Brihaspati, however, by the following passage, reconciles the inconsistency between the texts of Kátyáyana and Manu, and that of Yájñavalkya, by pointing out the case in which a brother takes the succession prior to a mother as laid down in the texts of Kátyáyana and Manu. "Of a deceased son who leaves neither wife nor male issue, the mother must be considered as heiress, or, *by her consent, the brother may inherit.*"(1)

15. The term "widow" comprehends by synecdoche the daughter, daughter's son, and father, who constitute the series of heirs prescribed in the text of [Yájñavalkya] founded on reasoning. It must, therefore, be understood that the son referred to in the above text of Brihaspati is one that dies leaving no son, widow, daughter, daughter's son, or father.

16. The conclusion hence is, that the consent of the mother and the existence of the grandmother are the two instances in which exceptions to the rule contained in the passage: "Both parents, brothers likewise," are to be observed in the manner laid down in the texts of Kátyáyana and Manu.

17. Some, however, say that, in the compact series of heirs from the mother to the nephew shewn in the text: "Both the parents, brothers likewise, and their sons," there is no place for the grandmother; and that therefore she must succeed *after* the nephew. They further say that this will be inconsistent with no texts of law, the succession of a grandmother being nowhere expressly provided. This opinion is also to be rejected, for the succession of a grandmother is not unprovided for. On the contrary, the place which a grandmother is to take in the order of succession has, as already noticed, been expressly pointed out in the above texts of Kátyáyana and Manu, in the former by the use of the term "then [atha]," before the word "grandmother," and, in the latter, by the phrase "and the mother also being dead." The order prescribed by these texts must therefore be considered as forming an exception to, and interfering with, the compact series of heirs laid down in the text [of Yájñavalkya] founded on reasoning.

18. Sankha and Likhita say:—"The wealth of one dying sonless goes to the brothers, and in default of them, the parents take it."(2) This, on the rule for the construction of special and general rules on the same subject, refers to one dying, not divided, but re-united. Thus, there is no inconsistency.

(1) Brihaspati, xxv. 63.

(2) II. Cole. Dig.

19. Brihaspati says:—"In default of the son, the widow takes; in default of the widow, the uterine brother; in default of him, the dáyádies [kinsmen, but literally signifying those that take the heritage 'Dáya']. The wealth afterwards goes to the daughter's son."(1) This passage, however, is intended to exclude a uterine brother from succession *before* a widow and not to place a uterine brother *before* a daughter, who may be said to be included in the term "dáyádi" by reason of her taking the heritage, for if the latter were the case, the passage would become inconsistent with the same author's text: "As a son, so does the daughter of a man proceed from his several limbs, &c."

20. Devala says:—"Next, let the brothers of the whole blood divide the heritage of him who leaves no male issue, or daughters equal, or let the father if he survive, or [half] brothers belonging to the same caste, or the mother, or the wife, inherit in their order."(2)

21. Although from the way in which this passage is worded, it might seem that the several heirs therein enumerated are to take the inheritance in the order in which they have been set forth, yet, in order to obviate the inconsistency of the passage with the import of all the other passages above quoted, it must be construed thus: let the wealth of him who leaves no male issue be taken by the wife of the rank of a patni, or let the daughters of equal class divide among them, or let the surviving father take it. The use of the term "surviving," which would otherwise become meaningless, indicates that, in case of the father not surviving, the mother succeeds. The mother, therefore, takes the heritage on failure of the father; then the uterine brothers and brothers belonging to the same caste take in their order, *i.e.* the uterine brothers take first, and then the brothers of the half-blood, but of the same caste. This is the way in which the above passage of Devala is to be construed, and the passage itself must be understood to refer to cases where there may exist neither a mother's consent nor a grandmother.

22. On the same subject, Kátyáyana lays down the order of succession in an easily intelligible form. "The widow [patni] being a woman of honest family, or the daughters, or, on failure of them, the father, or the mother, or the brother, or [his] sons, are pronounced to be the heirs of one who leaves no male issue."(3)

23. The term "sons" used in the texts, means the sons of the brother alone, as that is the term immediately preceding "sons" in the text. It has therefore been said by Yájñavalkya: "Brothers likewise and *their sons*."

24. Sangrahakára says:—"In default of such a daughter, the mother takes the inheritance, although the father, the son of a step-mother, or his son, may be alive. In default of such a mother, the father's mother takes the inheritance, although the father, the

(1) Brihaspati, xxv. 65, 66. (2) Cole. Dig.

(3) Cole. Dig.

son of a Kshatriyá mother, or his son may be alive. In default of the grandmother, the father takes the inheritance." As this passage is founded on the reasoning of Dháresvara, and that reasoning has been refuted by Visvarùpa and others, the passage is to be overlooked as not based on sound arguments.

25. The same author again says:—"Where there are two kinds of brothers, one of the whole blood and the other of the half-blood, the brothers of the whole blood take the inheritance to the exclusion of those of the half-blood." This passage is to be countenanced as founded on sound reason.

26. In the case of brother's sons also, the same rule applies where there is a competition between the son of a brother of the whole blood and the son of a brother of the half-blood. Therefore, on failure of the son of a uterine brother, the son of a brother by a different mother takes the inheritance.

SECTION V.

On the right of succession of kinsmen, distant kinsmen, and cognate kindred.

1. If it be asked who succeeds if there be not even brother's sons, Yájñavalkya says:—"Gotrajáh [Gentiles] or kinsmen, sprung from the same family with the deceased."(1) Add here "take the inheritance."

2. The term "gotrajáh" [though general in its signification] on the analogy of beeves and oxen, excludes the father, brother and his son, who have already been separately noticed, and comprehends the son of the grandfather and such other persons as are sprung from the same family. The term "gotrajáh" further excludes the daughter of the grandfather and the like females, it being *primâ facie* a complex of two plural terms [gotrajah cha, gotrajah cha "gentiles and gentiles"] of the masculine gender formed by omitting one and retaining the other. Gotrajáh, according to Sanskrit *Grammar*, admits also of the assumption that it is a complex of two terms of different genders, but for such an assumption, the context must afford a special ground, as in the instance of the following, "*Fetch* kukkutau [fowls]. Let me cause them to have sexual intercourse." Here, however, there exists no such special ground. On the contrary, the term "gotrajáh" being used in the text of Yájñavalkya, after the words "brothers likewise and their sons," both of which denote *males*, must be concluded to mean male gotrajah only and not females.

3. Again, referring to the Sruti: "Females and persons deficient in an organ of sense or member are deemed incompetent to inherit," it will be found reconcilable with the conclusion that the complex term "gotrajáh" is a compound of two terms of the mas-

(1) Yájñavalkya, ii. 135.

culine gender. Whereas, if "gotrajáh" were considered to consist of two terms of different genders, namely, the masculine and feminine, such a construction would be opposed to the purport of the Sruti. The latter construction is therefore set aside.

4. Accordingly, Bháshyakára, the commentator of the sutras or aphorisms of Ápastamba, construes the sutras: "The father, being alive, distributed his heritage among his sons [putrebhyah]," as signifying that heritage was distributed among the sons alone and not among the daughters also, these being females.

5. Under the rule of Grammar "Brothers [bhratarau] and sons [putrau], with sisters and daughters," the terms "duhitá cha" and "putrah cha" [daughter and son] form the complex term "putrau" [sons], by the omission of one term and the retention of the other of the regular compound of two species, though, accordingly, by supposing that the complex word "putra" [sons] in the phrase "among his sons [putrebhyah]" used in the aphorism above quoted, comprises two terms of two different genders, namely, daughter and son, it is practicable, to construe the passage in question as implying that heritage was distributed among daughters also, yet such a construction is to be rejected as opposed to the principle that males alone are competent to inherit and not females, inculcated by the Sruti: "Females and persons deficient in an organ of sense or member are deemed incompetent to inherit."

6. Some say: "Gotrajáh [Gentiles] are the *peternal grandmother* and relations connected by funeral oblations of food [sapindas] and relations connected by libations of water [samánodakas]. In the first place, the grandmother takes the inheritance. The paternal grandmoth r's succession, immediately after the mother, was seemingly suggested by the text: 'And the mother also being dead, the father's mother shall take the heritage;' no place, however, is found for her in the compact series of heirs from the father to the nephew. She must, therefore, of course, succeed immediately after the nephew, and thus there is no contradiction." This is not right. Even after the nephew, there is no place to be found for the grandmother, the term "gotrajáh" *immediately* following the term "nephew" in the compact series of heirs, and that term referring as above noticed, to male gotrajah. Besides, "gotrajáh" (in Sanskrit) means persons sprung from the same family. But a grandmother is not one sprung from the same family with the deceased. She was born in a different family and had connection with the family of the deceased, only by marriage. She cannot hence be called "gotrajah." This much is sufficient to refute the opinion above quoted.

7. Yájñavalkya, it must be understood, has used in his text the term "gotrajáh" in the form of a conjunctive compound, as he has done the term "pitarau" [parents] in the same passage. This is because, as between both the parents, he saw no ground for giving precedence to one over the other, so he found no reason among gotrajáhs for selecting one in preference to another. For

instance, in declaring that, in default of a brother's son, the son of the grandfather succeeds, what reason could there be? None.

8. The objector here asks who has declared a grandfather's son entitled to inheritance in supersession of a grandfather? The reply is, that Yájñavalkya himself must be presumed to have so declared by his having used in his passage the term "gotrajáh" [gentiles] immediately after the phrase "brothers likewise and their sons." The separate mention of brothers and their sons while they are comprehended in the term "gotrajáh," is indicative of the rule that, of the descendants severally belonging to the grandfather and others, only two, namely, the son and the grandson, are entitled to inheritance, as is the case with the descendants of the father.

9. Manu, too, propounds the same principle:—"Whoever is the next in the line of kinsmen [sapiṇḍa], to him the inheritance belongs. On failure of such kindred, the distant kinsman [sakulya] shall be the heir; or the spiritual preceptor or the pupil."(1)

10. Dháresvara explains the above passage, as follows:—"The term 'pinda' [funeral oblations of food] used in the above passage, must be taken to mean 'sapiṇḍa' [kinsmen connected by funeral oblations of food]. Who is the first sapiṇḍa [kinsman] from whom the line of 'sapiṇḍas' is to be reckoned? The father alone, it being, in the first place, declared 'the estate of one who leaves no male issue, is inherited by the father, &c.' Where, after a father, the father, and the sons of such a father are both alive, who takes the inheritance next? I say, the sons [and not the father] of the father, or, in other words, the brothers of the deceased. How is this? It is because, in the text, 'the estate of one who leaves no male issue, is inherited by the father, or by the brother alone [eva]" the particle '*eva*' [alone] indicates the exclusion of the grandfather from inheritance. It would hence appear that although, on the death of a father, his father and son, [*i.e.* the grandfather and brother of the deceased], stand both on an equal footing in point of propinquity and there would thus be no reason, under the text of Manu above cited, para, 9, for giving preference to one over the other; yet, on the strength of the text of the same author, ending with the phrase 'by the brother *alone*' the order of succession, with reference to nearness of kin, must take its course through the *descendants* only. Therefore, by the text 'whoever is the next in the line of kinsmen, &c., para. 9,' it must be understood that in default of the descendants [these being only two, *i.e.* the son and grandson, as observed in the latter part of para. 8 of this section] of the father, the descendants of the grandfather succeed, and that in default of them, the descendants of the great-grandfather take the inheritance. A similar rule of succession must be observed as far as the highest degree of sapiṇḍas. On failure of sapiṇḍas, sakulyas succeed: kindred connected by libations of water [samánodakas]

(1) Manu, ix. 187.

being also represented by the term "sakulya" used in Manu's text, para. 9. Among them, too, on failure of the descendants of the nearest, the descendants of the next in order take the inheritance."

11. On the strength of the above explanation, it must be concluded that those who declare that, after the brother's son, the grandfather succeeds, that on failure of him, his descendants take, and that a similar rule is to be observed in the case of the great-grandfather and others, are ignorant of the true meaning of the text, inculcating an order of succession different from that ordained by the text founded on reasoning.

12. The order of succession then stands, as follows:—On failure of brother's son the son of the grandfather succeeds; on failure of him, the son of the great-grandfather; on failure of him, his son; on failure of him, the son of the father of the great-great-grandfather; on failure of him, his son; on failure of him, the son of the father of the great-great-grandfather; on failure of him, his son; on failure of him, the son of the last sapiṇḍa; on failure of him, his son; on failure of him, the son of the first samánodaka [a kinsman allied by common libations of water]; on failure of him, his son. A similar rule is to be observed in regard to the succession of the descendants of each of the five samánodakas of the higher grade.

13. Brihaspati, bearing in mind all the above principles, declares: "Where there are many relatives [jnátayah], or remote kindred [sakulyáh] or cognate kindred [bándhaváh], whoever is nearest of kin, shall take the wealth of him, who dies without male issue."(1)

Jnátayah] sapiṇḍas, or kinsmen connected by funeral oblations of food. Sakulyáh] samánodakas, or distant kinsmen connected by libations of water. Bándhaváh] cognate kindred. A description of these is given, as follows, in a different Smriti, according to their order of relationship.

14. "The sons of his own father's sister, and the sons of his own mother's sister, and the sons of his maternal uncle must be considered as his own cognate kindred. The sons of his father's paternal aunt, the sons of his father's maternal aunt and the sons of his father's maternal uncle, must be deemed his father's cognate kindred. The sons of his mother's paternal aunt, the sons of his mother's maternal aunt and the sons of his mother's maternal uncle, must be reckoned his mother's cognate kindred."(2)

15. Of the kinsmen, distant kinsmen, and cognate kindred, in default of one that stands nearest in the order *expressly* given, he that may be somehow viewed to stand on a par with him may be selected; it being generally declared by Gautama:—"Let those

(1) Brihaspati, xxv. 62.
(2) Attributed to Baudhayána, but not found in his Institutes, S. B. E. Series.

take the inheritance who give the funeral cake [pinda], who are the descendants from the same gotra, or who are sprung from the same Rishi."(1)

SECTION VI.

On the succession of strangers upon failure of kindred.

1. If it be asked who inherits in default of bandhus, Yájñavalkya says: "A pupil and a fellow-student."(2) Add to these words "take the inheritance."

2. He is a pupil, on whom the deceased caused the ceremony of Upanayana to be performed and to whom he taught the Vedas.

3. He is a fellow-student who acquires his learning from the same preceptor (as the deceased).

4. It is to be understood here that the preceptor himself was not specifically mentioned in the above text, as it was unnecessary, seeing that a preceptor is entitled to more regard than a pupil, and that since mention has been made of the pupil himself in the line of heirs, the preceptor, on the analogy of the loaf and staff,(a) takes, of course, precedence before the pupil and succeeds to the deceased's property in default of bandhus.

5. If it be asked who succeeds in default of a fellow-student, Manu declares: "On failure of all those, the lawful heirs are such Bráhmins as have read the three Vedas, as are pure in body and mind, and as have subdued their passions. Thus virtue is not lost. The property of a Bráhmin shall never be taken by the king. This is a settled law."(3)

6. In default of a Bráhmin possessing the qualifications above described, Nárada, referring to the king, says: "If there be no heir of a Bráhmin's wealth, on his death it must be given to a Bráhmin. Otherwise, the king is tainted with sin."(4)

On his death] on the death of the owner of the property. As for the wealth of one (deceased) belonging to any other class than a Bráhmin, Manu ordains: "But the wealth of the other classes, on failure of all (heirs), the king may take."(5) A king is he who rules a city or town.

7. Nárada, after having declared that, in default of all heirs, the estate goes to the king, says: "Excepting the wealth of a Bráhmin; but a king, attentive to his duty, shall allot a maintenance to the wives of the deceased. This is declared to be the rule of inheritance."(6)

To the wives of the deceased] to the wives of the deceased owner of the property, not being a Bráhmin, and which wives are incompetent to inherit his property.

(1) Gautama, xxviii. 21.
(2) Yájñavalkya, ii. 135.
(3) Manu, ix. 188.
(4) Not found in Nárada, S. B. E. Series.
(5) Manu, ix. 189.
(6) Nárada, xiii. 51.

(a) See Note on p. 26 of this volume.

8. In the instance contemplated by the text, para. 5: "On failure of all those, &c.," Sangrahakára points out certain distinctions with reference to the caste to which the deceased in each case may belong. "On failure of the father, his father's descendants take the wealth. On failure of such descendants, the descendants of his grandfather. On failure of these descendants too, the descendants of his great-grandfather. In like order, the sapiṇḍas, or kinsmen of the higher degrees, also take the inheritance. On failure of sapiṇḍas, the sakulyas, a priest, a pupil, a virtuous Brahmachári, a virtuous Bráhmin. On failure of the first among these the next in order takes. The wealth of a Súdrá, on failure of (heirs as far as) the uterine brother, goes to the king. Accordingly, the wealth of a Kshatriyá or Vaisyá, too, goes to the king in default of (heirs as far as) the preceptor."

9. Sangrahakára, being an adherent to Dháresvara's opinion, says in the above passage that in default of the father, the estate goes to the descendants of his (father's) father.

But it must be understood as our opinion, that on failure of the father, the mother is the successor; on her failure, the grandmother; on her failure, the descendants of the father of the deceased, namely, the brothers and their sons.

10. All that has been hitherto stated as to succession in default of male issue, refers *mutatis mutandis* to the property of a deceased belonging to one or the other of the following classes—

I.—Anupaníta, or one on whom the ceremony of Upanayana was not performed.

II.—Upakurvánaka Brahmachári, or a temporary student, who is to be married.

III.—Samávarta, or a Brahmachári (student), on whom the ceremony (called Samávartanam) on return from the preceptor's house, has been performed.

IV.—Grihasta, or a married man or housekeeper.

V.—One who is not included in any of the other orders, (namely, those of the hermit and the ascetic), and on whom the ceremony (Samávarta) on return from the preceptor's house, has been performed.

SECTION VII.

On succession to the property of a perpetual student, a hermit, or an ascetic.

1. With regard to the wealth of a Naishtika Brahmachári (a perpetual student), Vánaprastha (a hermit), and Yati (an ascetic), a different rule has been laid down. Yájñavalkya:—"The heirs of a hermit, of an ascetic, and of a student are, in order, the pre-

ceptor, the virtuous pupil, the spiritual brother and associate in holiness."(1)

2. The term "student" (Brahmachári), from being mentioned in the above passage together with an ascetic, means a Naishtika or perpetual student. A spiritual brother is one who has the same preceptor. An associate in holiness is one who has studied the same Sastra. "In order" means, on failure of the first among these, the next in order.

CHAPTER XII.

On a second partition of property after the re-union of coparceners.

1. Brihaspati:—"He, who, being once separated, dwells again through affection with his father, brother, or paternal uncle, is termed re-united."(2)

The purport of the above text is, that a son or the like, who, having once divided the property with his father, brother, or paternal uncle, unites again with any of them through affection, &c., is termed one re-united. Hence, by implication, there can be no re-union with relations other than a father, a brother, or a paternal uncle.

2. A re-union is completed not by the union of the coparceners alone, but by the union of their wealth. It must therefore be understood that the term "re-union" does not apply, until the effects which had been divided, are again mixed together as before, so as to destroy altogether every mark indicating division. A mere joint residence of coparceners does not amount to a re-union.

3. Manu, therefore, lays down a distinction as regards a second partition to be made after re-union: "If brothers once divided and living again together as parceners, make a second partition, the shares must in that case be equal. There is not in this instance, any right of primogeniture [jyeshtyam]."(3) Living together] residing together. Make a second partition] make a second partition of the mixed wealth.

4. In the above passage, the words: "The shares must in that case be equal," are in themselves sufficient to show the non-recognition of primogeniture. While so, inequality of division on the score of primogeniture, has again been expressly prohibited in the passage and the object of this is to show that, in the distribution, the shares may be even unequal where the wealth, at the time of re-union, had been made up of disproportionate contributions. Therefore, the inequality of shares must be proportionate to the extent of the contribution which each parcener had made at

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(1) Yájñavalkya, ii. 137. (2) Brihaspati, xxv. 72.
(3) Manu, ix. 210.

the time of re-union. The inference hence is, that the effect of re-union is to destroy simply the identity of property and not the extent of share of each of the parceners concerned in the re-union.

5. Brihaspati propounds unequal partition on a different ground. "If any one of the re-united brothers acquire wealth by science, valour, or the like, two shares of it must be given to him and the rest shall have each a share."(1)

Of it] of the wealth acquired as stated.

6. The above passage is intended to enjoin division of what was acquired, even where such acquisition had been made without detriment to the re-united property.

7. If, before a second partition takes place among the re-united parceners, one of them die leaving sons and the like, the second partition is to take place according to the principle contained in the text: "Among those whose fathers are deceased, the allotment of shares is according to the fathers,"(2) there being no other law on the subject. Where, however, the deceased re-united parcener leaves no son and the like, the rule contained in the passage: "The wife and the daughters, &c.,"(3) does not apply, there being a different law on the subject.

8. Accordingly, Brihaspati:—"Among brothers who being once separated, again live together through mutual affection, there is no right of primogeniture when partition is again made. Should any of them die or enter a different order, his share shall not be lost; but shall be taken by the uterine brother."(4)

9. If, before partition in a family *prior* to re-union, one should die or enter a religious order without having male issue, his share becomes extinct because no partition has taken place in the family, and there has been consequently no ascertainment of the extent of share of each parcener. Therefore all the other undivided parceners take the whole heritage of the deceased. But, in the instance of a parcener dying after re-union, no such ascertainment of the extent of his share is wanting, the extent having already been ascertained in the original partition. A re-union cannot have the effect of destroying the extent of share so ascertained. It simply destroys the *exclusive* right which he had possessed prior to the re-union to the property that had fallen to his share. Therefore, the whole estate is not, on his death, taken by all the other re-united parceners. But at the time of the second partition, his share is set apart. This share does not, however, go to the widow, as in the case of the wealth of a *divided* husband; but it goes to the re-united *uterine* brother under the text, para. 8, of Brihaspati above quoted. The term "uterine brother," though used in the text in the singular number, includes also the plural.

10. Hence, Nárada:—"Among brothers, if any one die with-

(1) Brihaspati, xxv. 77.
(2) Yájñavalkya, ii. 120.
(3) Yájñavalkya, ii. 135.
(4) Brihaspati, xxv. 73—74.

out issue or enter a religious order, let *the rest of the brothers* divide his wealth, except the wife's separate property."(1)

"The rest of the brothers" means the rest of the uterine brothers, it being declared by Yájñavalkya: "[The property of] a re-united brother [is taken by] the re-united [and that of] a uterine brother [by] the uterine brother."(2) The meaning is, that the property of a re-united brother, the re-united brothers only take and not the widow and others; and that among them too, only the uterine brothers take.

11. If, in such a case, it be asked what is to become of the widow and unmarried daughters of the deceased re-united, Nárada says:—"Let them allow a maintenance to his women for life, provided these preserve unsullied the bed of their lord. But if they behave otherwise, the brothers may resume that allowance. The maintenance of the daughter [if any] of such a one is enjoined to be made out of her father's share. She shall take a share until she is initiated; after that, her husband shall support her."(3) The meaning of the second of the above two verses must be understood to be, that the initiation of the daughter of one that dies or enters a religious order, as well as the support of such a daughter till initiation, must be defrayed by the rest of the brothers alone.

12. Where, among the rest of the brothers, there are certain uterine brothers re-united and certain uterine brothers not re-united, those uterine brothers that are re-united shall alone divide the property among them; Nárada reciting the text: "Among brothers, if any one die without issue, &c." (para. 10), after having declared, "The wealth of a re-united parcener goes to the re-united only."

13. Where none of the uterine brothers are re-united and the half-brothers are re-united, the uterine brothers alone take in that case the property though not re-united, and not the half-brothers re-united; Yájñavalkya having declared: "[Uterine brothers] though not re-united, shall obtain the property, and not the son of a different mother."(4)

14. The particle "*api*" [though] used in the above text, is indicative of the prohibition against the succession of half-brothers though re-united.

15. Where, among the rest of the brothers there are no uterine brothers at all, then the re-united half-brothers take the wealth, under the text of Brihaspati: "Brothers who become re-united through affection share the wealth of each other."(5) In this passage, the words 'half-brothers' must be understood in order to avoid tautology.

16. The text of Yájñavalkya: "A half-brother being again associated, shall not take the wealth of his half-brother,"(6) is ap-

(1) Nárada, xiii. 25.
(2) Yájñavalkya, ii. 138.
(3) Nárada, xiii. 26.
(4) Yájñavalkya, ii. 139.
(5) Brihaspati, xxv. 76.
(6) Yájñavalkya, ii. 139.

plicable to a case where there are uterine brothers. Hence, there is no inconsistency.

17. The objector here says: if it be declared that the re-united half-brothers inherit solely on failure of uterine brothers even though not re-united, the declaration becomes opposed to the text of Manu: "Should the eldest or the youngest of several brothers be deprived of his allotment at the distribution or should any one of them die, his share shall not be lost; but his uterine brothers *and sisters and such brothers as are re-united after a separation* shall assemble together and divide his share equally."(1) The meaning of this text is, that such half-brothers as are re-united, together with the uterine brothers and sisters of the same womb, shall assemble and divide equally the share that was not lost. The words 'together' and 'assemble' used in the text, render it clear that the joining together of the several heirs specified, is necessary to their dividing the wealth. Hence, the inconsistency of the declaration above referred to with this text, is manifest.

18. In order to reconcile the above inconsistency, some construe the above passage of Manu, as follows: "The share that was not so lost, if there be re-united uterine brothers, they alone take to the exclusion of uterine brothers not re-united; if none of the uterine brothers be re-united, then all the uterine brothers take. They do so assembling together and without inequality in the share. In default of them, the half-brothers take." But this construction is very unfair, requiring, as it does, the supplying of several terms not warranted by the text. It is therefore to be rejected.

19. Others again, in order to avoid the inconsistency above noticed, recite the text of Yájñavalkya: "A half-brother being again associated shall not take the wealth of his half-brother (para. 16). Uterine brothers, though not re-united, shall obtain the property and not the son of a different mother" (para. 13) and construe it so as to correspond *apparently* with the text of Manu. They take the whole first hemistich: "Anyodaryasthu samsrishti nányodaryodhanam harét," and state the meaning of the words and the substance of the passage, as follows:—"A half-brother [meaning one born of a rival wife], being a re-united parcener, takes the estate; but a half-brother, who was not re-united, does not obtain the wealth. Thus, by the direct provisions of the text [anvaya] and by the exception [vyatireka], re-union is shewn to be a reason for a half-brother's succession." Then they take the phrase "Apicha adadyat samsrishti" in the second hemistich and connecting it with the word "asamsrishti" preceding it, state the meaning of the words and the substance of the passage, as follows:—"The term 'not re-united' is connected also with what follows, and hence, even one who was not again associated, may take the effects of a deceased re-united parcener. Who is he? The author replies 'one re-united,' that is, one united by the identity of the

(1) Manu, ix, 211 and 212.

womb [in which he was conceived]; in other words, a uterine or whole brother. It is thus declared that relation by the whole blood is a reason for the succession of the brother, though not re-united in coparcenary." They then take the concluding part [Anyamátrujah] of the second hemistich, and adding to it the particle "*eva*," connect it with the word [samsrishti] in the middle of the second passage, and state the meaning as follows: "The term 'united' likewise is connected with what follows, and here it signifies re-united [as a coparcener]. The words 'not the son of a different mother' must be interpreted by supplying the affirmative particle [*eva*] understood. Though he be a re-united parcener, yet being issue of a different mother, he shall not exclusively take the estate of his associated co-heir." They thus make the substance of the whole passage conform with that of Manu. They conclude by saying: "Thus by the occurrence of the word 'though' [api] in one sentence ['though not re-united, &c.'] and by the denial implied in the restrictive affirmation [eva "exclusively"] understood in the other ['one united may take the property, and not exclusively the son of a different mother'] it is shewn that a whole brother not re-united and a half-brother being re-united shall take and share the estate; for the reasons of both rights may subsist at the same instant." An interpretation of this nature can only satisfy those who made it; it cannot meet with the approbation of the learned, for the wording of the passage is wholly incapable of bearing such an interpretation, which apparently is one tortured out by the interpreter with the force of his own invention.

20. The inconsistency between the texts of Manu (para. 17) and Yájñavalkya (paras. 13—16), as apparent from the plain wording of both the texts, must here be reconciled by shewing the case to which each of the texts is applicable and not by trying to place forced constructions upon them, in order to make them consistent with each other. The text of Manu is applicable to a case where there is property immoveable together with property of other kinds.

21. Prajápati, in such a case, propounds, by the following passage, the division of property between a re-united and an un-re-united parcener: "Whatever concealed wealth is brought to light and whatever moveables there exist, become the property of the re-united parceners; but lands and houses, those not re-united shall take according to their shares."

22. The purport of the text is, that half-brothers re-united shall take in due shares the concealed wealth and moveable property consisting of bipeds, of quadrupeds, &c., and that uterine brothers not re-united and also uterine sisters shall take the houses, lands, &c., in due shares. The conclusion hence is, that the text of Yájñavalkya (paras. 11—13) is applicable where there exists only one species of property, or, in other words, where there exists either immoveable property *alone* or such property *alone* as is not immoveable.

23. Where there are no half-brothers re-united, then the

father or paternal uncle, whoever was re-united, takes the estate; it being declared by Gautama: "When a re-united parcener dies, his re-united co-heir shares his estate."(1)

24. Where there is neither a father nor a paternal uncle re-united, the half-brothers not re-united take; in default of them the father not re-united; in default of him, the mother; and in default of her, the widow (patni).

25. Accordingly, Sankha:—"The property of one who departed for heaven without male issue goes to the brothers: in default of them, both parents shall take it, or the eldest wife (patni)".(2)

26. The meaning is, where one re-united with his paternal uncle, father, or brother, dies without male issue, the wealth left by him goes to his half-brother not re-united, in default of the co-parceners [above specified] re-united with him.

27. Accordingly, Nárada: "The wealth of a re-united parcener goes to the re-united only. No one else inherits. Where no issue is left, the others take."(3)

28. The meaning of the passage is, that while there exist re-united parceners, the half-brothers and the like not re-united do not take the wealth. Where, however, all the parceners re-united become issueless, then succeed the half-brothers not re-united. What they so take is the share of the re-united parceners. Here, too, the order prescribed by the passage of Sankha: "The property of one who departed for heaven without male issue, goes to the brothers, &c." (para. 25) is to be observed.

29. The term "eldest wife" used in the passage (para. 25) of Sankha, refers to a virtuous wife; it does not serve to exclude a junior wife if virtuous.

30. The particle "*va*" [or] has been used in the passage in lieu of the phrase "on failure of." It indicates an alternative; but, inasmuch as there could be no alternative with reference to any such thing as "svámyam" [ownership], it not being capable of existing indeterminately in one or other of the heirs at one and the same time, on the principle that a thing cannot have an indeterminate existence, therefore the alternative indicated by the particle "*va*" has reference only to the default of the perferable heir.

31. The order of succession accordingly stands thus. In default of the brother, the father inherits; in default of him, the mother; and in default of her, the widow. To avoid the supposition that this order of succession is opposed to that prescribed in the case of the wealth of a divided member dying sonless, by the passage: "The wife and the daughters, &c.," the author says that the order of succession is applicable to the wealth of a *re-united* parcener dying sonless. The order of succession prescribed by the above text: "The wife and the daughters, &c." in the case of the

( ) Gautama, xxviii. 28. (2) II. Cole. Dig., 532. ccccciii.
(3) Nárada, xiii. 24.

wealth of a divided member is founded on reasoning; and yet that being superseded in the present instance, by the order of succession expressly declared by Sankha (para. 25), the passage of the latter must alone be here relied on; there being no reason to be stated in support of the same.

32. If, in observing the above order, there exist a widow and also sapiṇḍas, such as a brother's son and the like, Nárada:—"On the death of their husband, the widows, in the absence of brother, father, or mother [abhratru-pitru-matrukah] of their husband, and all the sapiṇḍas shall divide their respective wealth in due shares."(1)

33. In using the word "abhratru-pitru-matrukah," which is a compound term called "Dvandva samása," Nárada, contrary to the rule, "Of two or more persons or things, that which is the most respectable should be put first," has placed "bhratru" [brother] before "pitru matru" [father and mother] who are superiors to a brother. The object, however, of Nárada, in doing so, is to show that the wealth of a re-united parcener dying without male issue, goes first to the brother; in default of him, to the father; in default of him, to the mother; and in default of her, to the widow [patni] that observes all kinds of religious duties. The conclusion hence is, that widows do not inherit in default of secondary sons alone, as is the rule in the case of the wealth of a *divided* member; but only in default of a half-brother not re-united, and of a father and mother also.

34. The phrase "all the sapiṇḍas, &c.," used in the above text (para. 32) of Nárada, comprehends sapiṇḍas [not being a brother, father, or mother] of the deceased sonless re-united co-parcener, such as brother's sons and the like. These sapiṇḍas and the widow are to take out of the re-united common property, the latter [widow] the share of her deceased husband, and the former [the brother's sons and the like], their respective father's share which has been mixed with the deceased's wealth on the occasion of re-union during the life-time of the deceased.

35. In default of the widow, the sister takes the inheritance of the sonless re-united. Accordingly, Brihaspati:—"His sister is then entitled to take the inheritance. This law concerns one who leaves no issue, nor wife, nor father. Whether married or unmarried, the sister succeeds on the death of a uterine brother, identity of womb being alone the reason of succession in the case of sisters of both the above descriptions."(2)

36. The particle "*cha*" [also] used in the above text, shews that the rule contained in the text is applicable to the wealth of one who [besides leaving no son, widow, or father] leaves also no brother or mother.

37. In default of the sister, the sapiṇḍas take the property of the deceased re-united, according to the order prescribed by

(1) Nárada, xiii. 50 and 51. (2) Brihaspati, xxv. 75.

the text: "Whoever is the next in the line of kinsmen, to him the inheritance belongs," the purport of which text has already been given. There is no separate law on the subject in the case of the wealth of a re-united parcener.

38. Accordingly, the same author [Brihaspati]: "Where one dies without issue, widow, brother, father, or mother, all the sapiṇḍas divide his wealth in due shares."(1)

His wealth] the wealth of the re-united parcener. "Where one dies without issue," means where one dies even without a half-brother and the like, who are declared, by the passage aforementioned, competent to inherit the property of a re-united coparcener. Such is the meaning of the first hemistich of the above text of Brihaspati.

39. In default of the sapiṇḍas, the wealth of a deceased parcener re-united, goes to the samánodakas and others, just in the same manner as has been prescribed in the case of the wealth of a divided parcener. There is no separate law as to who is to succeed to the property of a re-united parcener, *after* the sapiṇḍas.

CHAPTER XIII.

On the rights of sons born after a partition and on allotment of a share to a coparcener returning from abroad.

1. Vishṇu, referring to a son born after partition, says:— "Sons with whom the father has made a partition, should give a share to the son born after the distribution."(2)

2. The meaning is: "If the sons divided the family property with their father while the latter's wife was pregnant, but not known to be so, they shall give to the son who is afterwards born of that pregnancy, his share out of the shares which they had previously taken from ignorance of his existence. The father, for his own part, need give nothing to such a son out of his own share, but he is to take charge of the share which his other sons give, as above stated, on account of the son born after the partition, and live with him, it being necessary that he should protect him during his minority. Hence, it has been ordained by the text above quoted that a share to the son born after partition should be given by the sons alone with whom the father had already made the partition, and not by the father also.

3. Gautama says: "A son begotten after partition [takes] the wealth of his father only."(3) 'Takes' must be understood in the above passage.

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(1) Brihaspati, xxv. 101. (2) Vishṇu, xvii. 3.
(3) Gautama, xxviii. 29.

4. This passage, however, is applicable to a case where a father dies before the sons with whom he had made a partition. A share to the son born after the partition.

The particle "*eva*" [only] has been used in the passage, in order to show that father's wealth alone is to be taken by the son born after the partition, and that the sons previously born need not give him any share in such a case.

6. Brihaspati says:—"The younger brothers of those who have made a partition with their father, whether children of the same mother or of different wives, shall take their father's share."(1)

"Their father's share," means their father's share *only*.

7. This passage is applicable to the case of sons, of whom the conception and birth were both *subsequent* to the division of the estate. The reason why such sons should take their father's share only, has also been stated by the same author. "A son born before partition has no claim on the paternal wealth, nor one begotten after it on that of his brother."(2) Has no claim on the paternal wealth] has no right to the paternal wealth.

8. The reason why a son born before partition has no claim on the paternal wealth, is because he has divided off with his father; and the reason why a son begotten after the partition has no claim on the wealth of his brother, is because such a brother possesses no property in which the son born after the partition can have an interest. Thus, it must be understood.

9. Brihaspati, on the strength of the principle that a son born before partition has no claim on the paternal wealth, which is the first of the two principles contained in his own passage above quoted, says something more on the subject. "All the wealth which is acquired by the father himself who has made a partition with his sons goes to the son begotten by him after the partition. Those born before it are declared to have no right to the property."(3)

10. The term "all" has been used in the text, in order to preclude the supposition that in the wealth acquired by the father subsequent to partition, the sons born before the partition have a claim to share, no share having previously been obtained by them in it.

11. The conclusion hence is, that the sons born before partition and the sons born after it have no claim whatever on each other's wealth, and in this respect they are viewed as if they were not related at all to each other.

12. The same author, however, points out, by the following passage, that there is a slight distinction in this respect. "As in the wealth, so in the debts likewise, and in gifts, pledges, and purchases, they have no claims on each other, except for acts of mourning and libations of water."(4)

(1) Brihaspati, xxv. 17.
(2) *Ibid*, xxv. 18.
(3) Brihaspati, xxv. 19.
(4) *Ibid*, xxv. 20.

13. The meaning is, that they have claims on each other in respect of acts of mourning and libations of water, but not in respect of wealth, &c.

14. The want of claim on each other in respect of debts, &c., occurs only where there is no re-union. But where there is a re-union, the same author adds :—" Brothers who become re-united through affection share the wealth of each other."(1)

15. Manu ordains :—" A son born after division shall alone take the paternal wealth, or he shall participate [in that wealth] with such of the brothers as are re-united with the father."(2)

Or he shall partcipate] ; here add the words " in parental wealth."

16. This text is not hence inconsistent with the one already cited. It is applicable to a case where the father has died while living with the son born after the partition.

17. Yájñavalkya, referring to a son born subsequently to partition *after the death of the father*, says : " When the sons have been separated, one who is afterwards born of a woman equal in class, shares the distribution, or his allotment may be made out of the visible estate corrected for income and expenditure."(3)

18. If, after a partition had taken place among brothers on the death of their father, while the pregnancy of their father's widow was not manifest, a son be born, he is entitled to a share. He gets a share out of the whole property already divided, or, according to the second hemistich of the above text, he gets a share out of the visible estate [such as household utensils, beasts of burden, milch cattle, ornaments, workmen, and the like] corrected for income and expenditure, that is, after allowing correction for both income and expenditure.

19. The adjective " visible " was placed before the term " estate " in the second hemistich of the above passage, in order to exclude the son born after partition from participation of the concealed wealth which had been already divided.

20. Although the son born after partition is in no way inferior to the other sons, yet Yájñavalkya has ordained in his case the alternative prescribed by the second hemistich, thinking that, as the existence of such a son was not ascertainable at the time of the original partition, a reduction in his share is not unreasonable. As, however, the existence of such a son was unascertainable, not owing to any fault on the part of the son, it must be understood that the giving him a share in the whole distribution, as stated in the first hemistich of the verse, is also considered not to be altogether unreasonable.

21. If, in the case of parceners returning from abroad after partition, one, from his own fault, had absented himself and should

(1) Brihaspati, xxv. 20. (2) Manu, ix. 216.
(3) Yájñavalkya, ii. 122.

return after the distribution of the estate, he is to receive only a reduced share. There does not exist in his case the alternative of giving a full share in the estate. Accordingly, Brihaspati: "If a man leave the common family and reside in another country, he will get, when he returns, only half a share. There is no doubt in this."(1)

22. Where one, leaving the common family, *i.e.* quitting the place where all his relations reside, goes away to a very remote region, and the rest of the parceners *from ignorance of his existence*, make a partition among themselves of the whole estate, if he should subsequently arrive, only a half share is to be given him out of the estate already divided. Here, as the division was made *from ignorance of the existence of the absentee*, and the absence was attributable to his fault, the alternative of giving him a full share in the estate has not been prescribed in his case. Hence, it has been asserted at the conclusion of the passage that "there is no doubt in this."

23. Likewise, where one, after *long* absence, arrives, if partition had already been made from ignorance of his existence, the same author states: "Be it debt or a writing, or house or field, which descended from his paternal grandfather, he shall take his due share of it, when he comes, even though he have been long absent."(2)

Due share] half a share.

When he comes] when he comes after the partition.

24. If a grandson [of the absentee] and the like return after partition, the same author states that they are to receive a share only in property hereditary. "Be the descendant third, fifth or even seventh in degree, he shall receive his hereditary allotment on proof of his birth and name."

25. To a certain class of absentees that return after partition, the same author states that a share is to be given in landed property alone though there may be other hereditary wealth. "To the lineal descendants when they appear, of that man, whom the neighbours and old inhabitants know by tradition to be the proprietor, the land must be surrendered by his kinsmen."(3)

When they appear] when they appear after the partition had taken place.

26. When a parcener returns, whether before or after partition, and insists on getting his share, the same author states that he will be entitled to receive the share only when he establishes, by proof divine or human, his title to the property that is in others' possession. "Whether partition have or have not been made, whenever a co-heir appears, he shall receive a share of whatever he proves to be the common property."(4)

(1) Not found.
(2) Brihaspati, XXV. 23.
(3) Brihaspati, XXV. 26.
(4) *Ibid*, XXV. 22.

CHAPTER XIV.

On the distribution of effects concealed.

1. Manu :—"When all the debts and wealth have been justly distributed according to law, anything which may be afterwards discovered shall be subject to an equal distribution."(1)

2. If, of all property visible, whether debts or effects, a partition had been made according to the rules prescribed by the text: "All sons shall share equally the wealth of the father, but of those, he who is endowed with science and good qualities, is entitled to receive a greater portion,"(2) and if, at any subsequent period, it should appear, on the return of any absent person, that any debt is due by the parceners to such person, or that such person has, as a trustee or the like, possession of any wealth belonging to the parceners, such debt or wealth is then to be divided in equal shares, and no greater portion is to be allowed in it to any parcener on the score of his being endowed with science or good qualities.

3. Since the text of Manu, above quoted, declares debt discovered *after* partition divisible in equal shares, it is inferrible that in debts discovered *before* partition, unequal shares are allowable as in the case of wealth.

4. If, at the time of partition, any one from fraudulent motives had concealed any portion of the family property, making it appear that it belonged to a different party, and if, on subsequent enquiry, it is known that the property belongs to the family, it is to be divided in equal shares. Accordingly, Kátyáyana : "What has been concealed by one and is afterwards discovered, let the sons, if the father be deceased, divide equally with their brothers."(3)

5. The meaning is, that where there is no father, the sons alone are to divide among them the property discovered, as stated.

6. Where, among coparceners residing together, one appropriates to himself any portion of the effects belonging to the family, and the same is somehow discovered subsequent to the partition, it is to be divided equally among the parceners. Accordingly, Yájñavalkya:—"Effects which have been withheld by one co-heir from another, and which are discovered after the separation, let them again divide in equal shares : this is a settled rule."(4)

Let them again divide] let all the divided parceners again divide.

7. As property withheld, so is property ill-distributed also subject to equal distribution. Accordingly, Kátyáyana :—"Effects which are withheld by them from each other, and property which has been ill-distributed, being subsequently discovered, let them divide in equal shares. So Bhrigu has ordained."(5)

(1) Manu, ix. 218.
(2) Brihaspati, xxv. 10.
(3) II. Cole. Dig., 485, cccIxvxii.
(4) Yájñavalkya, ii. 126.
(5) II. Cole. Dig., 485, cccIxxvii.

Property which has been ill-distributed] property of which a distribution has been made in unequal portions contrary to law.

8. Property recovered after being seized or lost is to be divided equally, just in the same manner as property withheld by parceners from each other and property ill-distributed. Where, however, a divided parcener acquires property *subsequent* to partition, it belongs to him exclusively. The other parceners have no interest whatever in it. Accordingly, the same author (Kátyáyana) :—"That wealth which has been acquired by a man after separation belongs to him exclusively, but what has been recovered after being seized or lost, as well as property of the descriptions afore-mentioned, shall be afterwards divided."(1)

Property afore-mentioned] property withheld by parceners from each other and property ill-distributed. These have been noticed here for the sake of example.

Shall be afterwards divided] shall be divided in the manner before stated.

9. Hence, it must be understood that the author has declared that the partition of property recovered after being seized or lost is to be in equal shares only.

10. Manu and others having, by the above passages, propounded partition of such property only as is discovered after partition, it is to be understood that the division already made is not thereby to be disturbed, but that it is nevertheless to be considered as properly effected. Therefore, although, after a partition, certain properties belonging in common to the family are discovered, yet the parties are to be viewed as divided in virtue of the partition already made.

11. There is, however, a text of Manu, as follows :—"When any common property whatever is brought to light after partition has been effected, that is not considered a [fair] partition, it must even be made over again."(2)

12. But this text must be considered as applicable to a case where common property is discovered before the divided parceners have proceeded to improve or expend the property already divided. Otherwise, the text becomes opposed to all the other texts above quoted.

13. The object of the law in allowing a re-distribution of the *whole* property, instead of dividing the subsequently discovered property alone, keeping the former distribution undisturbed, is that deductions, &c. [of the nature referred to in Chapter III] may be made in that case out of the subsequently discovered property also.

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(1) II. Cole. Dig., 485, cccIxxvii. (2) Manu, ix.

CHAPTER XV.

On the effect of partition.

1. Nárada :—"When there are many persons sprung from one man, who have their [religious] duties [dharma] apart, and transactions [kriya] apart, and are separate in the materials of work [karmagunáh], if they be not accordant in affairs, should they give or sell their own shares, they do all that as they please ; for they are masters of their own wealth."(1)

When there are many persons sprung from one man] when there are several persons descending from one man and divided in several ways.

Who have their religious duties apart] who perform religious rites, such as Agnihotra, &c., requiring pecuniary aid for their performance, independently of each other.

And transactions apart] who manage likewise the transactions concerning the income and expenditure of the divided wealth, as also the agricultural affairs, separately.

And are separate in the materials of work] who likewise possess separate household utensils and other implements of work.

2. Should one of these not consent to the act of the other, yet the latter is to disregard the consent and manage his own affairs. They are also at liberty to give, sell, or mortgage their respective shares at pleasure, since each is lord of his own wealth, once divided.

3. Brihaspati, however, states :—"Separated heirs, as those who are unseparated, are equal in respect of immoveables, for one has not power over the whole to give, mortgage, or sell it."(2) But this text is applicable to a case where, from difficulty of dividing the land itself in equal portions, the co-heirs enter into an agreement as to the division of its produce in time of harvest and divide actually the property other than the land belonging in common to the family. In such a case, it is clear that none of the parceners possesses an exclusive and independent title to the land.

4. The same author further states :—"Whatever share a man enjoys is not capable of being changed from him"(3) and, referring to the king, adds : "If one subsequently dispute a distribution which was made with his own consent, he shall be compelled by the king to abide by his share or be amerced if he persist in contention (anubandham)."(4) Anubandham] obstinacy or pertinaciousness.

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(1) Nárada, xiii. 42 and 43.
(2) Brihaspati, xxv. 93.
(3) Brihaspati, xxv. 94.
(4) *Ibid*, xxv. 95.

CHAPTER XVI.

On the evidence of partition.

1. Yájñavalkya:—"When partition is denied, the fact of it may be ascertained by the evidence of kinsmen, relatives, and witnesses, and by written proof, or by separate possession [yautakaih] of house or field."(1)

2. Yautakaih] possessed separately. The expression "when partition is denied," used in the text, includes also the collateral questions arising out of the fact of a partition. Hence, Nárada:—"If a question arise among co-heirs in regard to the fact of partition, it must be ascertained by the evidence of kinsmen and by the record of the distribution, or by the separate transaction of affairs."(2)

3. Where a question arises as to the truth of the partition itself, as by saying "no partition took place among us," or as to the truth of a collateral circumstance connected with the partition, as by saying "The partition was made but not of the *whole* property," the fact is to be determined by the evidence of kinsmen, *i.e.* co-heirs and the like, and by the written deed of partition, or by inferences to be drawn from separate transaction of affairs, &c.

4. "Separate transaction of affairs," means the performance of the sacrifice called "Vaisvadeva," the giving of alms, and the feeding of guests [atithees], all separately.

5. If it be asked how these circumstances furnish evidence in favour of partition, the same author states:—"The religious duties of unseparated brothers are single. When partition indeed has been made, religious duties become separate for each of them."(3)

6. Brihaspati, too, says on the subject:—"Among co-heirs living in commensality, *i.e.* with one dressing of food, the worship of manes, deities and Bráhmins takes place in one house only—but in a family of divided brothers, the above acts are performed in each house separately."(4)

7. As the separate performance of Vaisvadeva and other rites does not exist in an undivided family, such separate performance indicates division, and may therefore be taken as a sign of partition where a question shall arise regarding partition.

8. The same author alludes to certain other signs of previous partition, such as bearing testimony for each other, and the like, and states that these acts are permitted among divided parceners only and not among the undivided. "Separated and not unseparated brothers may reciprocally *bear testimony*, become sureties, bestow gifts, and accept presents."(5)

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(1) Yájñavalkya, ii. 149.
(2) Nárada, xiii. 40.
(3) Nárada, xiii. 37.
(4) Brihaspati, xxv. 6.
(5) Found in Nárada, (xiii. 39.)

9. Thus, the truth of partition may be ascertained even from reciprocal bearing of testimony and the like. Hence, the same author adds:—"Those by whom such matters are publicly transacted with their co-heirs, may be known to be separate even without written evidence."(1)

By whom such matters are publicly transacted] by whom all or any such matters are publicly transacted.

10. The reciprocal lending of money is also a circumstance indicating division among co-parceners. It cannot exist in an undivided family. Accordingly, Yájñavalkya:—"It is declared that, in an undivided family, brothers, husband and wife, father and son, cannot become sureties for each other; nor reciprocally lend to, nor give evidence for each other."(2)

11. Hence, a lender is necessarily concluded to be divided with the borrower. Accordingly, Brihaspati:—"They who have their income, expenditure and wealth distinct, and have mutual transactions of money-lending [kuseedam] and traffic, are undoubtedly separate."(3)

Kuseedam] lending money for interest. Traffic] trade.

The term "mutual" is applicable both to money-lending and traffic.

12. The same author further declares that division must be inferred from these circumstances, only in default of proof directly establishing the fact. "A violent crime, right to immoveable property, and a previous partition among co-heirs, may be ascertained by presumptive proof, if there be no witnesses."(4)

A previous partition] a partition that took place before the time of dispute regarding it.

Presumptive proof] proof arising from circumstances.

13. The same author enumerates certain circumstances tending to raise the presumption of the commission of a violent crime, &c. "Family feud [kulánubandham], rivalship [vyághatam], or discovery of a portion of the booty [hodhum], may be evidence of a violent crime, possession of the land may be proof of property, and separate wealth is an argument of partition."(5)

Family feud] grudge existing since the time of ancestors. Rivalship] mutual malice.

Hodhum] discovery of a portion of what has been forcibly carried away.

Possession of the land] possession of the land by the party claiming it.

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(1) Found in Nárada, (xiii. 40).
(2) Yájñavalkya, ii. 52.
(3) Brihaspati, xxv. 92.
(4) *Ibid*, xxv. 90.
(5) Brihaspati, xxv. 91.

14. Kátyáyana, on the subject:—"Partition of patrimony shall be presumed where brothers have lived ten years apart, separated in their religious rites and civil observances."(1)

The term "brothers" is here used to denote coparceners in general, and the term "patrimony" to denote heritage of any kind.

15. The meaning of the above text is, that although a partition of heritage may *not* actually have taken place, yet, in the instances referred to, the parties will be presumed to be divided, according to the passage: "He who sees his land possessed by a stranger for twenty years or his personal estate for ten years, without asserting his own right, loses his property in them."(2)

16. As for disputes arising *within* ten years after partition, they are to be determined not with reference to the rules contained in the above text (para. 14) of Kátyáyana, but with reference to the circumstances already noticed. Where, however, these circumstances, from being satisfactorily explained away, fail to prove the fact of division, there is a text which permits recourse being had to a divine test. The text is: "In the absence of all these, a divine test is prescribed."(3)

17. Such test, however, cannot be resorted to under the passage of Vriddha Yájñavalkya. "In doubts upon the subject of partition, the division must be proved by kinsmen, witnesses and written deeds: proof by ordeal is not to be."

18. If it be asked, how, if so, a division is to be ascertained, where it is incapable of being established by any of the circumstances afore-mentioned, Manu enjoins:—"When there is a doubt of partition among the co-heirs, a partition must be again made even though they have taken separate places of abode."(4)

19. This is where the fact of partition is so much involved in doubt as to be incapable of being ascertained under any circumstances.

20. Manu, however, states at the same time:—"Once is the partition of inheritance made. Once is a girl given in a marriage. Once is a promise of gift made. These three take place only once."(5) But this text refers to a partition which is capable of being ascertained by circumstances, &c. Hence there is no inconsistency.

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(1) Found in Nárada, xiii. 41.
(2) Not found.
(3) Anonymous.
(4) Not found.
(5) Manu, ix. 47.

VYAVAHARA MADHAVIYA.

Partition of Heritage.

1. Next the *Dayabhaga*; its definition is given by *Narada* thus: "That branch of the law is, by the wise, called *Dayabhaga*, in which the division, by the sons, of the paternal wealth is carried out."(1) Daya is wealth which becomes that of another by mere relationship to the owner. It is of two kinds, unobstructed and obstructed. The father's wealth and that of the grandfather is the unobstructed *Daya* or heritage of the sons and others. The wealth of the paternal uncle and the rest is obstructed heritage. Its division is known as the partition of heritage. Hence Dhareswara: "By the word *Daya* is meant only the wealth obtained through the father and through the mother." So also Sangrahakara: "By the word *Daya* is indicated the wealth obtained through the father and through the mother; and its partition will now be dealt with."

Time of Partition.

2. As to the time of partition, says Manu: "After the father and the mother, the brothers shall meet and equally divide the paternal (and the maternal) wealth; because they are not masters while the parents live." (2) "After the father" fixes the time for the division of the father's wealth and "after the mother" for the division of the mother's wealth. Therefore, it comes to this:— After the father, even while the mother is living, a partition of the father's wealth may be made; similarly, after the mother, even while the father lives, a partition of the mother's wealth may also be made; because of the inutility of waiting till the death of both for making a partition of either's wealth.

3. Hence is it said by *Sangrahakara*: "Even while the mother lives, there may be a partition of the father's wealth, because without the husband the mother has no independent ownership. So, too, may there be a partition of the mother's wealth, even while the father lives, because where there are children, the husband is not the master of his wife's wealth." The meaning is this:— Since on the husband's death the wife has no independent ownership in his property and since also after the wife's death, the husband is not, while there are children, owner of her property, while the one lives, a partition of the other's property is proper. From this it is implied that while they live the sons have no power to divide their property.

4. So says Sankha: "While the father lives the sons should not divide the wealth, though acquired by them subsequently. The sons are surely incompetent owing to their dependence in

(1) Narada, xiii. 1. (2) Manu, ix. 104.

wealth and acts of piety." (1) The meaning of this is:—Though the sons acquire ownership in the father's wealth by their very birth, yet, while the father lives, the sons should not divide that wealth, because, owing to their dependence in wealth and acts of piety, they are incompetent to make a division. Independence in wealth is independence in giving and receiving it.

5. So says Harita: "While the father lives, the sons have no independence in matters of receiving and giving wealth and censure." (2) "Receiving wealth" means enjoyment of wealth. "Giving" is expending. "Censure" is the punishment of servants, etc. Dependence in acts of piety is the incapacity to perform separately sacrificial and charitable acts.

6. As to what has been said by Devala: "The father being dead, the sons should divide the father's wealth; for, while the father lives defectless, the sons have no ownership," (3) that too, is intended to show their dependence, because the sons' ownership by birth in the father's wealth is established in the world.

7. How could ownership which could only be known from the Sastras be established in the world? That it could be known from the Sastras is shown by the text: "An owner is by inheritance, purchase, partition, seizure and finding."* (4) Where these exist, one becomes owner. What is obtained by acceptance of a gift, etc., that wealth is additional and peculiar to a Brahmin. To the Kshatriya what is obtained by conquest, etc., is peculiar. To the Vaisya what is obtained by agriculture, tending cattle, etc., is peculiar. What is obtained as wages for attendance on the twice-born is, to the Sudra, peculiar. Similarly, to the *Anulomajas* and *Pratilomajas* what is obtained by the performance of duties ordained for each class such as chariot-driving, etc., is additional. This is the meaning.

8. Here Sangrahakara argues thus: "Surely, he in whose hands a thing is, is not its owner. Is not property in the hands of another by theft, etc. Therefore, ownership is only by the Sastras, not even by enjoyment." This is the meaning. If he, in whose hands a thing is found were surely its owner, then one cannot say 'this man has stolen my property'; for, with whom a thing is found, he is its owner. If ownership were a worldly matter, the rule would be improper, which punishes one who acquires wealth from a thief by officiating at a sacrifice, etc., according to the text: "A Brahmin who desires to obtain wealth from the taker of what is not his, even by officiating at a sacrifice or teaching the Vedas, is surely

* This passage is here found in Oriental Library Manuscript and Madras Telugu Edition:—"Acceptance is additional to a Brahmin; conquest for a Kshatriya; and wages for a Vaisya and a Sudra" (Gautama x. 40-42). Unobstructed heritage is inheritance; and obstructed, partition. Taking water, grass, wood, etc., previously belonging to no one is seizure, Discovering a treasure trove, etc., is finding. Where these exist, one becomes owner, etc.

(1) II. Cole., Dig., 199, vii.
(2) II. Cole., Dig., 199, viii; reading slightly different.
(3) II. Cole., Dig., 196, v.
(4) Gautama, x. 39.

as good as a thief."(1) Therefore, ownership could be known by Sastras alone.

9. Not so; surely, ownership is a worldly matter. Because like rice it is a means to worldly objects and acts. If it be objected that the reason is too general, * because, even Vedic fires like the *Ahavaniya*, etc., may help worldly acts such as cooking, etc., (we reply) it is not like the *Ahavaniya*, etc., that they help cooking, etc., but like the worldly fires. This is the difference. Moreover, that ownership is a worldly matter is known from the fact that even the ignorant are seen to speak of ownership. As for the statement that the words of Gautama, "an owner is by inheritance, purchase, partition, etc.,"(2) are improper, not so. Because ownership acquired by acceptance of gift, etc., being worldly, the Sastra only confines the means (of acquisition), such as acceptance of gift, etc., to Brahmins and others. As for the statement, "one cannot say, 'this man has stolen my property,'" that is incorrect. Because a doubt as to ownership is proper where there is a doubt as to the acts which are the cause of ownership. As for the other argument that the rule would be improper which punishes one who acquires wealth from a thief in accordance with the text, "A Brahmin who desires to obtain wealth from the taker of what is not his, etc.,"(3) that too is wrong. Ownership acquired by prescribed means such as acceptance of gift, etc., being alone accepted by the world, the punishment of one who acquires wealth by transgressing the prescript is but proper. Hence, the provision for expiation in the text, "by giving it up, they are purified"(4) is also proper. This being so, as ownership is a worldly matter, wealth acquired by acceptance from an improper person becomes the property of the acquirer's sons by inheritance, and is divisible by them. Nor does any sin attach to them as the Smriti says: "Legal are the seven modes of acquiring wealth, inheritance, gain, purchase, conquest, investment, industry and acceptance from a virtuous person."(5)

10. Here, this should be considered, whether property is by partition, or partition is of property. The *primâ facie* wrong view of the matter is this: Property is by partition, not by birth. If property is by birth, since property becomes common to the son as soon as born, there could be no rule authorising the father to perform *ádhána*, etc., attainable by wealth. Moreover, the text relating to affectionate gifts: "What has been given by an affectionate husband the wife, even after the husband's death, can enjoy or give according to her choice, unless it were immoveable,"(6) would also be improper. This text also: "The father is the master of gems, pearls,

* The word here used is *anaikántika*. The *hetvábhása* or fallacy known as *anaikantikata* is of three kinds: (1) *Sádharana* where the *hetu* or reason is too general (2) *asádharana* where the reason is inapplicable either to similar or dissimilar instances; and (3) *anupasamhárin* where the instance taken is so comprehensive as to leave nothing to serve as a *Drishtanta*. The fallacy here is of the first kind.

(1) Manu, viii. 340.
(2) Gautama, x. 39.
(3) Manu viii. 340.
(4) Not found.
(5) Manu, x. 115.
(6) Narada, i, 28.

corals and all; but neither the father, nor the paternal grandfather is (master) of the immoveables. Cloths and jewels are enjoyed by the father's grace; but immoveables should not be enjoyed even by the paternal choice,"(1) relates to the immoveable property acquired by the grandfather. Therefore, ownership is by the death of the owner or by partition.

11. No ownership by mere birth is well known in the world. Also the word "partition" refers to the existence of many owners and is not known to refer to another's wealth or to the wealth of a deceased man. Again, ownership by birth is inferred from the text of Gautama: "A man obtains wealth as owner by mere birth. So say the Acharyas."(2) As for the statement that the text, "The father is the master of gems, pearls, corals, etc.," applies to immoveables acquired by the grandfather, it cannot be so, because the text says, "nor the paternal grandfather." It has also been said that the text, "While there are sons and grandsons, the grandfather cannot give away even his self-acquired property"(3) shows ownership by birth. That the father will have no power to perform *ádhána*, etc., attainable only by wealth, is incorrect; because the authority is implied by the text itself. As for what has been said that if ownership was by birth, the text of Vishnu: "What has been given by an affectionate husband, etc.,"(4) would be improper, that too is incorrect. Because though the property may be common, the father may well have authority to make an affectionate gift, inferrible from the text itself. In regard to immoveables, etc., though self-acquired, the father is certainly not independent of the sons, etc.; because of the text: "Of immoveables and bipeds though self-acquired there can be no gift or sale without assembling all the sons. Those who are born, those yet unborn, and those that are in the womb require maintenance. There can, therefore, be no gift or sale."(5) But in distress, etc., surely there is independence; because, the text says: "In times of distress, even a single member can make a gift, mortgage or sale of immoveable property for the benefit of the family and more so for pious acts."(6) Hence it has been well said that ownership is by mere birth. We shall pursue our present topic.

Time and Mode of Partition.

12. Yajnavalkya states another period for partition: "If the father makes a partition, he may divide his sons as he pleases. He may give the eldest the best share; or all may be equal sharers."(7) When the father wishes to make a partition, he may separate his sons from himself as he pleases. The mode of division at his choice is this: He may give the eldest the best share. The mode of making deductions at partition is shown in another *Smriti*: "To the eldest

(1) I. Cole., Dig., 411, xiii. and II. *Ibid*, 259, xcv.
(2) Not found; see Mit. I. i. 23.
(3) Not found.
(4) Not found in Vishnu; found in Narada, i. 28; see II Cole., Dig., 595.
(5) Cole., Dig., 411, xii & xiv; *ante* p. 7.
(6) *Ibid*, p. 458, lv.; *ante* p. 7.
(7) Yàjnavalkya, ii. 114.

one-twentieth is the deduction, and the best of all things; half of it to the middle-most; and a fourth to the youngest."(1) Otherwise, all the sons, the eldest and the rest should be made equal sharers. This unequal division relates to self-acquired property; because of the impropriety of unequal division at the father's choice of property descended by successive inheritance and so equally belonging to all.

13. Narada gives another period for partition: "After this, the sons may divide the father's wealth equally, when the mother's menstruation has ceased and the sisters have been married, or when (the father's) sexual desire has ceased, or when the father has renounced all worldly attachments."(2)

14. And Sankha: "(Even) when the father is unwilling there may be a partition of wealth, when he has become old or perverted in mind or when he is suffering from a lingering disease."(3) The meaning is this: When the father who is unwilling, *i. e.*, who does not desire partition, is very old, or is perverted in mind, *i.e.*, is not in the natural state of his mind, or suffering from a lingering disease, *i.e.*, afflicted with an incurable disease, then there may be partition at the desire of the sons only. This is the meaning. The mention of 'one suffering from a lingering disease' is illustrative and includes the irate, etc.

15. Hence alone Narada: "Being diseased or wrathful or addicted to sensual pleasures or acting contrary to the Sastras, a father is incompetent to make a partition."(4)

16. Yajnavalkya directs (the allotment of) equal shares to the wives in an equal partition by the father: "If he makes the shares equal, those wives should be made equal sharers, to whom no Stridhana has been given either by the husband or the father-in-law."(5) If the father at his option makes his sons equal sharers, then the wives to whom no Stridhana has been given should also be made equal sharers with the sons. If Stridhana had been given, they should be made to take half the son's share in accordance with the text "If given, however, he should allot a half."(6)

17. Prajapati says that after the father, partition should be made for the increase of religious merit: "Thus together shall they live or separately by desire of religious merit. If they are separate religious acts increase; hence separation is lawful."(7)

18. And Brihaspati: "For those who live with one cooking, the worship of the manes, gods and Brahmins is one; for the divided, the same will be in every house."(8)

19. Brihaspati thus lays down the mode of partition after the father's death and also Yajnavalkya: "After the parents, the sons should divide the assets and the debts equally."(9) On the contrary

(1) Manu, ix. 112.
(2) Narada, xiii. 3.
(3) H. Cole., Dig., 203, xviii.
(4) Narada, xiii. 16.
(5) Yajnavalkya, ii. 115.
(6) *Ibid.*
(7) Found in Manu, ix. 111.
(8) Brihaspati, xxv. 6.
(9) Brihaspati, xxv. 1; Yajnavalkya, ii. 117.

unequal division at a partition after the father's death has been indicated by Manu, (in the passage) beginning with "after the father and mother": "The eldest alone shall take the entire wealth of the father, and the others shall live in dependence on him, even so as on their father. To the eldest, one-twentieth is the deduction, and the best of all things; half of it to the middle-most; and one-fourth to the youngest. Where, however, no deductions are made, this is the mode of allotting shares: The eldest takes an additional share; the next younger takes one-half; the still younger sons take each a share. Thus is the law settled."(1)

20. And Gautama: "A twentieth share to the eldest; to the middle-most, a pair of cows, a chariot yoked with animals having teeth on both sides and a lame, blind, hornless, tailless bull if there are many; and to the youngest, a yoked cart, grain, iron and one of every class of quadrupeds; and the rest to be taken equally."(2)

21. This is the meaning: Of the whole paternal wealth, one-twentieth share to the eldest; the best pair of cows, a chariot yoked according to circumstances with any two of the best animals having teeth on both sides, such as horses, mules, asses, etc., (*kutah?*) devoid of horns, (*pandah*) deprived of tail; any one of the cattle such as cows, horses, etc., should, without distinction, be deducted as chance may direct—these to the middle-most; but to the youngest, grain such as rice, etc.; iron, that is, metals; anoyuktam, that is, yoked to a cart, one of each class of quadrupeds like cows, etc.

22. Brihaspati also says: "The eldest by birth, learning and qualities takes two shares of the inheritance."(3) Also Katyayana: "Distinction of shares should be so made by the wise that the wealth obtained at division shall serve the object of inheritance."(4) Unequal division during the (father's) lifetime is also stated by Narada: "A father in old age may himself separate his sons, giving the eldest the best share or otherwise according to his will. To those who have been separated by the father himself with equal, less or greater wealth, such partition alone is legal, because the father is the lord of all. The father who divides shall take two shares for himself."(5) Also Brihaspati: "The partition instituted by the father with equal, less or greater wealth should be maintained by the sons. Otherwise they should be punished."(6)

23. Since there is unequal division even at a partition during the father's lifetime, how could it be ruled that the sons should divide only equally? Not so. True there is unequal division according to the Sastras. But as it is condemned by the world, it is not practised, like the slaying of the sacrificial cow, etc. It has also been said by Sangrahakara: "Just as the custom of raising issue for the dead and the slaying of the sacrificial cow, even so partition with deductions is not now practised." And so Apastamba having

(1) Manu, ix. 105, 112, 116 and 117.
(2) Gautama, xxviii. 5-8; reading there somewhat different from the above.
(3) Brihaspati, xxv. 9.
(4) Not found.
(5) Narada, xiii, 4, 12, 15.
(6) Brihaspati, xxv. 4.

declared his own view in accordance with the text "Alive, he divided the inheritance among his sons," and having shown that partition with deductions is permitted, in the opinion of a few, according to the text: "In certain countries, gold, cows, black produce of land to the eldest; the chariot to the fathers; the domestic vessels, ornaments and the wealth (received) from jnatis to the wife,"(1) has condemned it as being opposed to Sastras on the ground that it is said without qualification: "Manu divided the inheritance among his sons."(2) Hence partition with distinctions though known to the Sastras should not be practised, being opposed to the opinion of the world and the Vedas. Thus, we get the rule that they should divide equally.

24. A partition of the heritage should be made by giving something even to him who is able to earn and does not desire the father's wealth. Yajnavalkya says that it is intended to prevent any desire of *his* sons to share in the inheritance: "Partition should be (made) after giving something to him who is able and does not desire."(3)

25. The partition among the sons of the mother's property is to be found where there are no daughters. So he himself says: "The daughters (take) the residue after (paying) the debts of the mother and in default of them the issue."(4) The daughters should divide what remains of the mother's wealth after discharging the debts incurred by the mother. Hence also, it is necessarily implied that even though there be daughters, the sons alone should divide the mother's wealth that is equal to or less than the debts incurred by her. Here a distinction is pointed out by Gautama: "The Stridhana is for the daughters, unmarried or unendowed."(5) Among the married and the unmarried, the mother's wealth goes to the unmarried only; and even among the married where there are rich and poor, the poor alone take it. This is the meaning.

26. Yajnavalkya states a distinction in regard to the division of the grandfather's wealth among the grandsons: "But among sons by different fathers, according to the father is the allotment of shares."(6) When three undivided sons die having begotten children, one having two, another three, and the last four, although the grandsons have a right by mere birth in their grandfather's property, yet the two grandsons get their father's one share, the three one share and the four one share. This is the meaning.

27. Opining this same thing says Brihaspati: "Their sons, equal or unequal, are directed to take the shares of their fathers."(7) Their sons, *i.e.*, the sons of each of the deceased fathers, who are equal or unequal, *i.e.*, greater or less in number, obtain their respective father's share. This is the meaning: Where there is no grandfather and one of his undivided sons dies and his son has

(1) Apastamba, II. 6, 14, 7.
(2) Taittiriya Sanhita iii, 1, 9, 4.
(3) Yajnavalkya, ii. 116.
(4) *Ibid*, 117.
(5) Gautama, xxviii. 24.
(6) Yajnavalkya, ii. 120.
(7) Brihaspati, xxv. 14.

not obtained a share from the grandfather, Katyayana says: "When an undivided younger brother is dead, let his son by whom no maintenance has been obtained from the grandfather be made a sharer of wealth. He shall obtain his father's share from the paternal uncle or from his sons. The same share should legally be taken by all the brothers. Let his son also take the share and beyond that it shall cease."(1) "Let his son also take the share," the meaning of it is this: The son of the grandson of the owner of the partible property shall, in default of his father, obtain his share. Beyond him, though there are descendants, shall cease a division of the great-great-grandfather's wealth.

28. So also Devala: "Among the members of the family living together, whether divided or undivided, there shall again be a division till the fourth (generation). Thus stands the law. So far the members of the family are Sapindas. Beyond that there is a difference in pinda."(2)

29. In reference to the question how a son who has his father living divides the grandfather's wealth with his father, Brihaspati says: "In the wealth acquired by the grandfather, moveable or even immoveable, the right of the father and the son to share has been declared to be equal."(3) Also Yajnavalkya: "Land which has been acquired by the grandfather, or corrody, or other *wealth*—in these the ownership of both the father and the son is equal."(4) Land (cornfield, etc.; corrody) so many leaves for a *bhara* of leaves, so many betel-nuts for a *bhara* of nuts and things of that description; (*wealth*) gold, silver, etc. In what was acquired by the grandfather by acceptance of gift, purchase, etc., the equal right of father and son is well known in the world. Hence there is partition. Since ownership is equal, the partition is not by the father's choice alone, nor is there a double share. Hence also it is, that though their ownership is equal it is expressly said that division is according to the fathers. Therefore, the text beginning with "A father making division shall take two shares for himself"(5) is either intended to establish unequal partition in other ages or else relates to the division of his self-acquisition; but nowhere is there an unequal division of the grandfather's wealth. It is shown by implication that the grandson has a right of interdiction when his undivided father makes a gift or sale of the grandfather's property.

30. Manu says that even in respect of the wealth acquired by the grandfather, in some cases, partition is made at the father's choice alone just as in the case of his self-acquisition: "Where a person, single-handed, recovers the unrecovered paternal wealth, he need not, if unwilling, divide it with his sons, because it is his self-acquisition."(6) If the acquisition of the grandfather is taken away by somebody and the father recovers it, he need not, if he does not

(1) II. Cole., Dig., 241, lxxix.
(2) *Ibid*, 242, lxxxi and lxxxii.
(3) Brihaspati, xxv. 8.
(4) Yajnavalkya, ii. 121.
(5) Narada, xiii. 12.
(6) Manu, ix. 209.

wish it, divide the property with his sons, even as in the case of his self-acquisition. This being so, it is in effect said that in regard to the grandfather's acquisition there is no partition at the father's choice alone.

31. Also Brihaspati: "In the wealth of the grandfather taken away and recovered by the father by his own ability and in what is obtained by learning, prowess, etc., the father's ownership is declared."(1)

32. Katyayana also: "What, being lost, is recovered by his ability and what he acquires, all this the father shall not, at a partition, be made to give to his sons."(2) The meaning is, that at a partition a father should not be made to give to his sons, what, having come by successive inheritance, was stolen by others and was recovered by his own ability and what was acquired by learning, prowess, etc.

33. Yajnavalkya says as to the mode of allotting a share to a son born after partition: "The son born, after partition, of a woman of equal class, takes a share."(3) This is the meaning: when the sons have divided, a son born of the wife of equal class takes the share of the father, as also that of the mother in the absence of daughters in accordance with the text, "In default of them, the issue." (4) But a son born of the wife of unequal class takes his own share of the patrimony; but the mother's wealth, those of equal class alone take. Hence alone says Manu: "The son born after partition, however, shall take only the parents' wealth."(5) [Pitryam] belonging to the parents. Since the Smriti says: "The son born before partition is not master of the parent's wealth, nor he who is born of the divided father; of his brother's share,"(6) the meaning is, that in the share of the parents the son born prior to division has no interest, because previously divided; nor the son born of the divided father in his brother's wealth. The father's acquisition subsequent to partition also goes to the son born after partition. Even so says Manu: "What is acquired by a father divided from his sons, all that goes to (the son) born of the divided (father). The sons born prior to partition have been declared to have no right."(7)

34. Manu says that the sons who, being divided, re-unite with the father, divide with the son born after the partition: "The son born after partition, however, shall take only the parents' wealth; or he shall divide with those who were re-united with him."(8) Yajnavalkya lays down the mode of allotting a share to a son born after partition made subsequent to the father's death: "Or his share shall be from the visible (wealth) as modified by income and expenditure."(9) To the son born, after the father's death and after partition, of the mother whose pregnancy was not apparent at the time of the partition among the brothers, a share equal to their own shall be allotted

(1) Brihaspati, xxv. 12.
(2) Not found.
(3) Yajnavalkya, ii. 122.
(4) *Ibid*, 117.
(5) Manu, ix. 126.
(6) Brihaspati, xxv. 18.
(7) Found in *Ibid*, 19.
(8) Manu, ix. 216.
(9) Yajnavalkya, ii. 22.

from the visible wealth, taken by the brothers, as modified by income and expenditure, that is, as determined by increase and decrease, by each contributing something from his share. This is the meaning. And this should be understood to apply also to the son born, after partition, of a deceased brother's widow whose pregnancy was not apparent at the time of the partition. But if the pregnancy is apparent, partition should be made after awaiting the confinement, in accordance with the text of Vasishtha: "Now, partition of heritage among brothers to await the birth of sons to those women who are childless."(1)

35. Yajnavalkya says that the son born after partition has no right of interdiction if the parents give their wealth to the divided sons and that what has been given by them should not be resumed by him: "What has been given by the parents to any one shall be the wealth of him alone."(2)

36. Yajnavalkya lays down the institution of shares to a mother at a partition after the father's death: "The mother of sons who divide after the father's death shall also take an equal share."(3) This should be understood to refer to a case where no Stridhana has been given. But if given, only half according to the text, "If given, however,he should allot a half."(4) Hence alone says another Smriti: "A mother with no wealth of her own shall take a share at a partition by sons."(5) The meaning is that, when a partition is made by sons, a mother who is *Asvadhana*, that is, who has no Stridhana of her own, shall take a share equal to that of a son. The mention of "mother" is intended to include co-wives. So also Vyasa: "The sonless wives of the father are declared equal sharers; and all the paternal grandmothers are declared equal to the mother."(6) What has been said by some, that the text "The mother also shall take a share," means that she takes only what is necessary for her livelihood, is not correct; because the words "share" and "equal" would then become meaningless. Then it is said that if the wealth is large, she takes what is necessary for her livelihood, but if the wealth be small she takes an equal share. That too is wrong, because such a view results in want of uniformity.

37. Vyasa lays down the mode of division among sons of different mothers, equal in class and number: "Among the sons, born of one father but having different mothers equal in class and number, partition according to the mothers is recommended."(7) Also Brihaspati: "If there are many born of one father, equal in class and number, their wealth should, in law, be divided according to the mothers."(8) But as to division among those unequal in number he himself says: "Among those equal in class but unequal in number, division according to males is recommended."(9)

(1) Vasishtha, xvii. 41.
(2) Not found.
(3) Yajnavalkya, ii. 155.
(4) *Ibid.*
(5) Cf. Brih., xxv. 64 and II. Dig., 244, lxxxv. and Vishnu, xviii. 34.
(6) II. Cole. Dig., 243, lxxxiv.
(7) Not found.
(8) Brihaspati, xxv. 15.
(9) *Ibid*, 16.

38. Yajnavalkya lays down the mode of division among sons of different castes: "A Brahmin's sons take, according to their class, four, three, two, one shares; the sons of a Kshatriya, three, two, one shares; the sons of a Vaisya, two, one shares."(1) A Brahmin's sons, that is, sons born of women belonging to the castes of Brahmin, etc., known as Brahmana, Murdhavasikta, Ambashtha and Nishada take four, three, two, one shares. The sons of a Kshatriya, by Kshatriya and other women, namely, Kshatriya, Mahishya and Ugra take three, two, one shares. The sons of a Vaisya, born of Vaisya and Sudra women, namely, Vaisya and Karana, take two, one shares.

39. Manu also says: "If a Brahmin has four wives in order, and sons are born of them, the following rule is declared in reference to their partition; let him who knows the law divide the whole into ten shares, and make a just division according to this law: Four shares shall the Brahmin take, and three the son of the Kshatriya woman; the Vaisya's son shall take two and the son of the Sudra woman a single share."(2) This refers to other than land obtained by acceptance of gift. Hence alone says Brihaspati: The land acquired by acceptance of gift shall not be given to the son of the Kshatriya woman and the rest. Even if the father give them, on his death, the son of the Brahmin woman takes."*(3) As for the text of Manu: "Whether he has a son or not, he shall not legally give more than one-tenth to the son by a Sudra woman,"(4) that applies to the son of a Sudra woman who is disobedient. The son of a Sudra woman by a Kshatriya or a Vaisya takes one-half and a Nishada takes a third. So also Brihat Vishnu: "The only son by Sudra woman of a twice-born takes a half. The course of devolution of the other half is the same as that of a sonless man's."(5) The meaning is that it goes to the near Sapindas.

40. Vyasa lays down that at a partition after the father's death, if some brothers are uninitiated and the sisters are unmarried these sacred rites ought to be performed by the already initiated brothers: "Those of them that are uninitiated should be initiated by their elder brothers only out of the paternal wealth; and the unmarried sisters also according to law."(6)

* This passage is here found in Orient. Lib. MS. and Madras Telugu Edition:—By the force of distinguishing acceptance of gift, land acquired by purchase, etc., surely goes also to the sons of Kshatriya woman, etc., and also by the express prohibition in the case of the Sudra woman's son by the text: "The son born of a Sudra woman by a twice-born does not deserve a share in land." As for the text of Manu, "The son of a Sudra woman by a Brahmin, Kshatriya or a Vaisya does not partake of the inheritance. What the father gives him, that alone shall be his wealth" that applies to a case where there is property given out of affection. Therefore there is no contradiction. Devala, says, as to the mode of dividing the inheritance among the Anulomajas, "An only Anulomaja son takes the whole wealth of the father." This applies to other than the Nishada. Hence alone says the same author: "The only son if a Nishada takes one-third of the father's property; the other two shares the Sapinda or the Sakulya shall take, because he who offers oblations should take the wealth."

(1) Yàjñavalkya, ii. 125.
(2) Manu, ix. 149, 152, 153.
(3) Brihaspati, xxv. 30.
(4) Manu, ix. 154.
(5) Vishnu, xviii. 32, 33.
(6) II. Cole, Dig., 297, cxxv.

41. Yajnavalkya points out a distinction in regard to the marriage of sisters: "The uninitiated, however, should be initiated by their brothers previously initiated, and the unmarried sisters also (by) giving them a fourth of their own share." (1) The uninitiated should be initiated by the brothers making a partition after the father's death out of the common funds. It is conveyed by this, that after the father the daughters also take a share. Hence alone says Manu: "From out of their own shares, the brothers should separately give their unmarried sisters a fourth; those who are unwilling to give shall be degraded."(2) The brothers of the Brahmin and other castes should from their own shares allot to the sisters of the Brahmin and other castes a fourth part of the share prescribed for their caste. It comes to this. If one had only a Brahmin wife, and one son and one unmarried daughter, then dividing the paternal wealth into two parts, and one of such parts into four shares, let the son give one share to the unmarried daughter and take the rest. Again there are two sons and one unmarried daughter; then dividing the paternal wealth into three parts, and one of such parts into four shares, let the two sons give one share to the unmarried daughter and divide and take the rest. Again if there are one son and two daughters, then dividing the paternal wealth into three parts and one of such parts into four shares, let the son give two shares to the two unmarried daughters and take all the rest. Thus should the allotment be made where the brothers and sisters are of the same caste and equal or unequal in number. Where there are one son by a Brahmin woman and one unmarried daughter by a Kshatriya woman, then dividing the paternal wealth into seven parts and three of such parts—the share of the son by a Kshatriya woman—into four shares, let the son by the Brahmin wife give one share to the unmarried daughter by the Kshatriya wife and take the rest. Where again there are two sons by a Brahmin wife and one unmarried daughter by a Kshatriya wife, then dividing the paternal wealth into eleven parts and three of such parts into four shares, let the two sons by the Brahmin wife give one share to the unmarried daughter by the Kshatriya wife and take all the rest. Similar inferences should be made in all cases where the brothers and the sisters are of different castes and equal or unequal in number. This is Medhatithi's commentary. The same is the opinion of Vijnanayogi.

42. But Bharuchi thinks that by the words "a fourth share" is intended only so much wealth as is necessary for the (performance of the) ceremony of marriage and that the unmarried daughters therefore take no shares. This is also the opinion of the author of the Chandrika. He says: The taking of a share is not for the purpose of participating in the heritage, but for the performance of the marriage sacrament. Hence alone has it been said by Devala; "To the unmarried daughters, the father's wealth should

(1) Yajnavalkya, ii. 124. (2) Manu. ix. 118.

be given for marriage." (1) Here what is consonant to reason should be accepted.

43. At a partition during the father's lifetime, what little the father gives, that alone the unmarried daughter gets; because there is no distinct direction. In the absence of the father's wealth, Narada says: "Where there is no paternal wealth, the ceremonies should necessarily be performed (by the brothers) at least by taking from their own share. Reduction here is prohibited."(2) The sacred rites of the brothers and sisters such as Jatakarma should necessarily, even if there be no property of the father, be performed by the brothers already initiated.

44. Sankha says that at the time of the partition of the paternal wealth, the unmarried daughter takes also the jewels, etc., worn by her; "When a partition is made of the heritage, the unmarried daughter takes the jewels and Stridhana given at the marriage."(3)

45. Yajnavalkya gives the description and the order of inheritance of the primary and the secondary sons: "The Aurasa is the son of the duly married wife; and equal to him is the son of the appointed daughter. Kshetraja is the son of the wife by a Sagotra or other person. One born in the household in secret is the Gudhaja. Kanina is the son of an unmarried woman and is considered the son of his maternal grandfather. The son born of a woman whose marriage had not been consummated or otherwise is the Paunarbhava. He whom the father or the mother gives is the Dattaka. The son bought, Krita, is he who has been sold by them; and a Kritrima is the son made by himself. One given by himself is the Svayamdattaka and one taken while in the womb is the Sahodha. One who, having been abandoned, is taken up is the Apaviddha. Of these in the absence of the preceding, the succeeding offers the pinda and takes the share."(4) The meaning is that, among these twelve sons if the preceding were not, the succeeding offers pinda, *i.e.*, performs the ceremonies and takes the share, *i.e.*, takes the wealth.

46. To the exclusive receipt of wealth by an Aurasa son, Manu states an exception where there are an Aurasa son and an appointed daughter: "If a son is born after the appointment of a daughter then the division is equal; because a woman has no seniority."(5)

47. Vasishtha also mentions exceptions in some cases: "If a Dattaka having been taken, an Aurasa son is born, the Dattaka takes a fourth share."(6)

48. Katyayana also: "If an Aurasa is born, sons of equal caste take a fourth share; if unequal in caste they get food and clothing."(7) The Kshetraja, Dattaka and other sons are equal in caste and take a fourth share even though there be an Aurasa. The Kanina, Gudhaja, Sahodha and Paunarbhava sons are of different caste and

(1) II. Cole., Dig., 543, ccccxx.
(2) Narada, xiii. 34.
(3) II. Cole., Dig., 299, cxxix,
(4) Yajnavalkya. ii. 129—32.
(5) Manu, ix. 134.
(6) Vasishtha, xv. 9.
(7) II. Cole., Dig., 348, ccxviii.

these do not take a share when there is an Aurasa but only get food and clothing. This is the meaning. As for what has been said by Vishnu : "The Kanina, Gudhaja, Paunarbhava and Sahodha sons are forbidden and these do not share in the pinda or the inheritance," (1) that is intended to prohibit the gift of a fourth share where there is an Aurasa son.

49. As for what has been said by Manu : "The Aurasa alone is the lord of the father's wealth ; but he shall allow a subsistence to the rest out of kindness "(2) that is only in commendation of the Aurasa son but not to prohibit the (giving of a) fourth share ; because otherwise the texts of Vasishtha and Katyayana which prescribe a fourth would become meaningless.

50. As for what has also been said by himself : "The Aurasa son making a partition of his paternal wealth shall give the Kshetraja son a sixth or a fifth of it,"(3) the decision is this : If he has very good qualities, he takes a fourth share ; if he is hostile as well as devoid of good qualities he takes a sixth ; if he is either only hostile or only devoid of good qualities he takes a fifth share.

51. As for what has been said by Harita : "Of the property about to be divided one-twenty-first part should be given to the Kanina, one-twentieth to the Paunarbhava, one-nineteenth to the Dvyamushyayana, one-eighteenth to the Kshetraja, one-seventeenth to the Putrikaputra and the rest to the Aurasa, "(4) that relates to the sons of a different caste devoid of good qualities.

52. As for what has been said by Manu : "The Aurasa, Kshetraja, Dattaka, Kritrima, Gudhaja and Apaviddha sons are the six who are sharers of heritage as well as kinsmen. The Kanina, Sahodha, Krita, Paunarbhava, Svayamdatta and Sudra sons are the six who are kinsmen but not sharers of heritage,"(5) that mentions two sixes and states that the first six are heirs and kinsmen and the second six are not heirs but kinsmen. And that should be explained thus : the first six inherit to their father's Sapindas and Samanodakas in the absence of any nearer heir ; the latter six have no such kinsmenship ; still the duty of offering libations of water, etc., as Sapinda and Sagotra is common to both classes. But in the absence of each preceding son, the succeeding son is certainly entitled to take the father's wealth, because Manu himself has declared the right of the substitutional sons other than the Aurasa to a share : "Not the brothers, not the fathers, but the sons are declared the takers of wealth."(6)

53. The Dvyamushyayana, however, takes also the wealth of his natural father. So also Yajnavalkya : "The son begotten by a sonless man on another's wife by appointment, inherits to both and also offers oblations according to law." (7) When, being appointed by the spiritual preceptor or others, the husband's brother or other person, himself sonless, begets a son on another's wife, with the

(1) Not found. (3) *Ibid*, 164. (5) Manu, ix. 159, 160.
(2) Manu, ix. 163. (4) II. Cole., Dig., 349, ccxix. (6) *Ibid*, 185.
(7) Yajnavalkya, ii. 127.

object of raising issue for himself and for that other, such son is the son of two fathers, and inherits and offers oblations to both. When, however, a man who has sons of his own begets a son on another's wife, with the sole object of raising issue for that other, such son is the son of the owner of the wife and not of the begetter. Accordingly it is said by Manu: "When upon a special contract a soil is given for sowing, the owner of the seed and the owner of the soil are here seen to be sharers. When no understanding is come to between the owner of the soil and the owner of the seed as to the result, then the benefit clearly belongs to the owner of the soil because the soil is more important than the seed."(1) The meaning of this is as follows:—When under an agreement that "the issue here produced shall belong to us both," the soil is given to the owner of the seed for sowing, of the son there produced the owner of the seed and the owner of the soil are owners. But when without making an agreement that "the issue here produced shall belong to us both," a son is raised by the owner of the seed on another's soil, such son belongs only to the owner of the soil, but not to the owner of the seed. Because it is seen in the case of cows, horses, etc., that the soil is more important than the seed.

54. The appointment by the spiritual preceptor, etc., applies only to betrothed woman, because appointment in other cases is prohibited by Manu: "On failure of issue, the desired progeny should be obtained by a woman duly authorised, from her husband's brother or a Sapinda. But he who is appointed to raise issue on a widow should, at night, smeared with ghee and silent, beget only one son, not a second on any account."(2) Having thus explained Niyoga, he goes on: "By no other should a widowed woman be directed by the twice-born to raise issue. Those who authorise her to raise issue by any other transgress the eternal law. Nowhere in the hymns relating to marriage is Niyoga referred to. Nor is the re-marriage of widows mentioned in the rites of marriage. This practice of brutes, condemned by the regenerate wise, was declared for men also when Vena ruled the kingdom. Ruler of the whole world and the most distinguished of the King-sages, he in the madness of his mind created a confusion of castes. From that time, virtuous men censure him who foolishly directs a widow to raise issue."(3)

55. If it be said: "There is an option because a rule and a prohibition are both seen here; and therefore, it is improper to confine Niyoga to the case of a betrothed woman," (we say) not so, because the applicability of Niyoga solely to that case has been laid down by Manu himself: "When a promise having been made by word of mouth, the husband of the damsel dies, her husband's brother shall take her in accordance with the following direction: Approaching her according to law, she being clad in white and virtuous, let them

1) Manu, ix. 52, 53. (2) *Ibid*, 59, 60. (3) *Ibid*, 64—68.

come together till confinement once during every period favourable for conception."(1)

56. The adopted son and the rest do not inherit to their begetter. So Manu also says: "The adopted son does not take the gotra or the wealth of his begetter. The oblations follow the gotra and the wealth; and from the giver (of the son) the funeral oblation departs."(2) The reference to the adopted son is intended to include the son bought and others. The texts declaring the heirship of secondary sons other than the adopted son relates to other Yugas because their recognition as sons in the Kali age is prohibited in another Smriti: "The learned men declare the following practices to be prohibited in the Kali age, the recognition of other than the legitimate and the adopted sons as sons, the begetting of issue by the husband's brother and the entry into the order of Vanaprastha or hermit."(3)

57. Yajnavalkya lays down a distinction in the case of a partition of Sudra's wealth: "Even he who is born of a *female slave** by a Sudra may be a sharer at his father's choice. When the father is dead, let the brothers make him a sharer of half. If brotherless, he shall take the whole in default of the daughter's son."(4) [Kamatah] at the father's choice, he obtains a share. If, when the father dies, there are brothers who are sons of the wedded wife, then they shall make the slave's son the sharer of half their shares. Again if there are no sons by a wedded wife nor daughters nor daughter's sons, then the slave's son takes the whole wealth; but if there is any one of these, the slave's son takes only half. The son begotten by a twice-born, however, does not even at the father's choice take a share nor even one-half and certainly not the whole, because of the qualification "by a Sudra." If he be agreeable, he takes a bare subsistence. This is the meaning.

Order of Succession.

58. Yajnavalkya lays down the devolution of the property of a sonless man: "The wife, the daughters also, the parents, the brothers likewise, their sons, the gotrojas, the bandhus, the disciple and the fellow-student—of these, in the absence of the preceding, the succeeding is heir to the wealth of the sonless deceased. This is the rule in all castes."(5) He who has not any of the twelve sons, Aurasa, etc., is a sonless man. The wealth of such a man deceased, the succeeding among the wife and the rest takes in the absence of the preceding. The meaning is that this order of taking the inheritance should be understood to apply to all Anulomajas, Murdhavasikta and others and to Brahmin and all other castes. [Patni] is a woman who has gone through the ceremony of marriage. She first takes the husband's wealth. Hence Brihaspati, says: "(Even) where

* The word here is *dasi* which in strictness means "a female slave." The Calcutta High Court takes the word in this strict sense. *See* 1 Cal. 1, 19 Cal. 91 and 28 Cal. 194. The other High Courts, however, take the word to include a concubine. *See* 7 Mad. 407, 4 Bom. 37 and 6 All. 329.

(1) *Ibid*, 69. 70. (3) Aditya Purana, quoted in part at II. Cole., Dig., 406.
(2) *Ibid*, 142. (4) Yajnavalkya, ii. 133, 134. (5) *Ibid*, 135, 136.

the men of the family, the father, brother and the like exist, the wife of a sonless deceased is heir to his wealth."(1) Here Brihat Manu states a distinction: "The sonless wife who, preserving the bed of her lord, is austere, shall herself offer oblations to him and shall also take the whole of his wealth,"(2) (the whole of his wealth consisting of the moveables and the immoveables.) So Prajapati also says, "Having taken the moveables, the immoveables, the baser metals, gold, grain, liquids and clothes, she should cause to be offered the monthly, yearly and other sraddhas; she should also honour the paternal uncle, the spiritual preceptor, the daughter's son, the husband's sister's son and maternal uncle, the aged, the helpless and the guests with oblations and charities (liberal gifts)."(3)

59. In default of her, the daughters of the same or different castes take according to their shares. So also says Brihaspati "The wife is the taker of the husband's wealth and in default of her, the daughter; because even as the son, she springs from the various limbs of men; while there is she, equal (by caste), married by an equal (by caste), virtuous and ever obedient, how can another take her father's wealth."(4) Where there are married and unmarried daughters, Katyayana says: "The wife is the heir to her husband's wealth if she is chaste; in her absence the daughter, if unmarried."(5) Even among the married daughters, where there are the endowed and the unendowed, the unendowed daughter alone takes. So says Gautama: "The Stridhana is for the daughters unmarried or unendowed."(6) It should not be considered that this applies only to the mother's wealth and not to the father's wealth, because the same reasoning applies also to the father's wealth.

60. In the absence of the daughter, the daughter's son is the taker of the wealth. So also Vishnu: "Where there is no son or son's son, the daughter's sons shall take the wealth. In offering oblations to the manes, the daughter's sons are considered as son's sons."(7) Manu also says: "By the son whom a daughter, whether appointed or not, bears to an equal, the maternal grandfather comes to have a son's son. He shall offer oblations and take the wealth."(8)

61. It should not be considered that the mention of parents after daughters is improper, because the daughter's son has to be mentioned as the taker of wealth. Since by "also" in "daughters also" the daughter's sons are comprehended, the parents take the wealth in the absence of the daughter's sons. Some say that though the order in which the parents take is not specifically mentioned, yet it is proper that the mother should take the wealth first because in splitting the compound (pitarau) the word "mother" has been placed first, and also because of her greater consanguinity. Others, however, say that the father is the first taker of the wealth, because of the text of Brihat Vishnu: "The wealth of a sonless man goes

(1) Brishaspati, xxv. 48.
(2) II. Cole. Dig. 535, ccccviii.
(3) Found in Brihaspati, xxv. 50, 51.
(4) Brihaspati, xxv. 55—7.
(5) Not found: *see* Saras Vil. 538.
(6) Gautama, xxviii. 24.
(7) II Cole, Dig., 548, ccccxxi.
(8) Manu, ix 136.

to the wife, and in default of her to the father," (1) and also because of the text of Katyayana: "Now, to a sonless deceased, the wife of good family, or the daughters, or in their default, the father, mother, brother and (his) sons have been declared (heirs)."(2) Here that which is reasonable should be taken.

62. In the absence of parents the brothers take the wealth. Even so says Manu: "The father shall take the wealth of a sonless man or his brothers."(3) Even among brothers, the uterine first take the wealth, because they are nearer. Hence alone says Manu: "Whoever is the nearest Sapinda, to him the wealth belongs."(4)

63. In default of brothers, the brothers' sons take the wealth of their uncle according to the fathers. Even among the brothers' sons, the uterine brothers' sons take the wealth first; and in their absence the sons of brothers by a different mother. This should be understood as before. Where there are father's brothers and brother's sons, the fathers brothers have no right to the wealth because in the absence of the brothers, the brother's sons are preferably mentioned. Where, however, a sonless brother dies and his brothers become entitled to his wealth without distinction, if, before a partition among brothers having sons, one of the brothers dies and his sons are living, then such sons derive their right through him and a partition between them and the brothers is proper.

64. In the absence of brothers' sons, the gotrajas take the wealth and the gotrajas are the paternal grandmother and the Sapindas and the Samanodakas. First the paternal grandmother takes the wealth. As for the text: "Where the mother also is dead, the father's mother shall take the wealth,"(5) which prescribes that the paternal grandmother shall come after the mother, that should be taken to simply declare the paternal grandmother's right and not to settle the order of succession, as it is opposed to the texts: "The wealth of the sonless deceased goes to the wife; in default of her to the daughter; in default of her it goes to the mother; in default of her it goes to the brothers; in default of them to the brother's sons; in their default to the Sakulyas; in default of them to the Bandhus; in default of them to the fellow-student; in default of all heirs to the King, excepting the Brahmin's wealth; the wealth of a Brahmin, the Brahmins alone shall take,"(6) and "Now to a sonless deceased, the wife born of good family or the daughters and in their default the father, mother, brother and (his) sons have been declared (heirs),"(2) and other texts which declare the order of succession.

65. In the absence of the paternal grandmother, the paternal grandfather, the paternal uncles and their sons take the wealth in order. In the absence of any issue of the paternal grandfather, the paternal great-grandmother, the paternal great-grandfather, his sons

(1) Not found.
(2) Not found.
(3) Not found.
(4) Manu, ix. 187.
(5) Manu, ix. 217.
(6) Vishnu, xvii. 4—14.

and their sons; in this way up to seven degrees the gotrajas take the wealth. In the absence of all Sapindas, the Samanodakas take the wealth and Samanodakas are the seven generations above the Sapindas or as far as birth and name are known. Hence it has been said by Brihat Manu: "The Sapinda relationship ceases with the seventh generation; but the Samanodaka relationship ceases with the fourteenth, or, as some say, it goes as far as the memory of birth and name. Beyond that, there is said to be 'gotra'."(1)

66. In the absence of the gotrajas, the bandhus take the wealth. And the bandhus are of three kinds as shown by Baudhayana: "One's own paternal aunt's sons, one's own maternal aunt's sons and one's own maternal uncle's sons should be understood to be *Atmabandhus*. The father's paternal aunt's sons, the father's maternal aunt's sons and the father's maternal uncle's sons should be understood to be *Pitribandhus*. The mother's paternal aunt's sons and the mother's maternal aunt's sons and the mother's maternal uncle's sons should be understood to be *Matribandhus*."(2) Even among the Bandhus he alone who is nearest takes first. Hence alone says Brihaspati: "Where there are many jnatis, sakulyas and bandhus, he among them who is nearest shall take the wealth of the sonless deceased."(3)

67. In the absence of bandhus comes the spiritual preceptor; in the absence of the spiritual preceptor comes the disciple. So says Manu: "Whoever is the nearest Sapinda, to him the wealth belongs. After that is the Sakulya, the spiritual preceptor or the disciple."(4) Apastamba also says: "In the absence of a Sapinda, the spiritual preceptor; in the absence of the spiritual preceptor, the disciple. In default of the disciple, the fellow-student; and in default of him some Srotriya."(5) So says Gautama: "Srotriyas shall take the wealth of a sonless Brahmin."(6) In default of them, a Brahmin takes. So says Manu: "In the absence of all, the Brahmins learned in the Vedas, holy and self-controlled, are the takers of wealth. Then virtue does not diminish."(7) A Brahmin's wealth never goes to the King. But the wealth of a Kshatriya and others goes to the King in default of heirs up to the fellow-student. So it has been said by Manu: "It is the law that a Brahmin's wealth should never be taken by the King. But the wealth of the men of other castes, the King shall take in the absence of all (heirs)."(8) It has been said by Narada also: "If, on a Brahmin's death, there is no heir to his wealth, it should be given to Brahmins alone. Otherwise the King will become a sinner."(9) And also by Sangrahakara: "If the father is not, the wealth goes to his father's issue. If they are not, then to the issue of his grandfather. If even they are not, then to his great grandfather's issue. In this same manner the

(1) See Mit., II. 5 & 6; cf. II Cole., Dig., 568 and Manu, v. 60.
(2) Not found.
(3) Brihaspati, xxv. 62.
(4) Manu, ix. 187.
(5) Apastamba, ii. 6, 14, 3.
(6) Gautama, xxviii. 41.
(7) Manu, ix. 188.
(8) *Ibid*, 189.
(9) Not found; cf. Narada, xiii.

Sapindas higher up take the inheritance. In default of them the Asapindas, the Spiritual preceptor or the disciple or the fellow-student or good Brahmins, the next in order in the absence of the preceding. The King shall take the Sudra's wealth in the absence of a brother of the same womb and similarly the Kshatriya's or the Vaisya's wealth in the absence of even the preceptor."

68. Now is it not improper that the wife should first take the wealth of a sonless man, because even where there is a wife Narada lays down the taking of wealth by brothers and the allowance of maintenance only to the wife: If "among the brothers some one having no issue should die or renounce the world, the rest shall divide his wealth except Stridhana and shall also allot maintenance to his wives until death, if they preserve the husband's bed, and shall deny it, (maintenance) to others."(1) Not so. * Let it be that it applies to undivided (brothers) because the text: "Whatever was the share of the reunited, that is declared to (go to) them (the re-united) alone. Otherwise the share in the case of the sonless will go to others,"(2) would become a redundancy. As for the text of Yajnavalkya, there is no inconsistency, as that is intended to lay down this, that the wife alone takes the wealth of her husband divided and not reunited.

69. As for what has been said by Manu: "The father shall take the wealth of a sonless man or the brothers,"(3) and also by Katyayana: "Where the wealth has been divided, the father shall take it in the absence of sons or in order the brother, or the mother or his father's mother,"(4) the text of Manu is not intended to lay down the order of succession because of the alternative shown by the use of "*Eva va*"; while that of Katyana is intended to lay down the right of the father, etc., to the wealth of the sonless man if the wife was unchaste because he himself has said: "The wife is heir to the husband's wealth if she is chaste. If disrespectful in her actions, shameless, reckless of money and bent on unchastity, she does not deserve wealth,"(5) [Wealth] reserved for maintenance. So has it been said by Narada: "Thirty-four Adhakas and forty panas shall a chaste widow obtain every year."(6) An Adhaka is eight less than two hundred handfuls of grain. Pana is Kárshápana, since Narada has said "Kárshápana is the current coin in the south"; it is a silver coin weighing 32 gunjas. The meaning is that she does not deserve a share of the land.

70. But Dhâresvara defines the scope of a number of texts: "The wife takes the wealth of a sonless man,"(7) etc., in another

* This passage is here found in Orient. Lib. MS. and the Madras Telugu Edn.:— Since the text: "If some one of the brothers having no issue should die, etc.," comes at the end of the passage beginning with, "Whatever was the share of the re-united, that is declared to go to them (the re-united) alone."

(1) Narada, xiii. 25, 26.
(2) Yajnavalkya, ii. 38.
(3) Manu, ix. 185.
(4) Cole., Dig., 552, ccccxxv.
(5) Cf. *Ibid*, 602, ccccIxxxiv.
(6) Not found; see Saras Vil. 523.
(7) Vishnu, xvii. 4.

way :—The wife soliciting an appointment (to raise issue) takes the wealth of a sonless divided man. So Manu also says: "He who takes the wealth and the wife of a deceased brother shall raise up a son for his brother and give him that wealth. If a younger brother beget a son on his elder brother's wife, division shall be equal in that case. Thus is the law settled."(1) Where a divided brother dies, the right of the wife to the property is only through the son, and not otherwise. The purport is that the same is the case in regard to the wealth of the undivided. Gautama also: "Those related by pinda, gotra and rishi shall divide the wealth, or the wife or let her desire to raise issue for (her) childless (husband)."(2) This is the meaning: Those related by Pinda, Gotra and Rishi shall divide the wealth of the sonless man; or the woman, it is assumed on the strength of this text, if she desire to raise issue.*

71. This is incorrect, because the texts of Gautama and others are intended to bear a different meaning. Of the text of Gautama: "Those related by pinda, gotra and rishi shall divide the wealth or the wife or let her desire to raise issue for (her) childless (husband)", the meaning is not that, *if* she desires issue, she takes the wealth of the sonless man, but that those related by pinda, gotra and rishi shall take the wealth of the sonless man or the wife shall take it and she may desire issue or remain chaste, for the words "va" (or) used in the text indicates an alternative and is not used in the sense of 'if.' Moreover the text of Manu: "He who takes the wealth, etc.,"(3) deals only with the Kshetraja son's right to wealth. Also the text of Sangrahakára declares only the right of the chaste wife, and not of one directed to raise issue by her husband's brother, etc.; because, otherwise the texts of Manu and Kátyáyana: "The sonless wife who, preserving the bed of her lord, is austere, shall herself offer oblations to him and take the whole of his wealth,"(4) and "The sonless wife who being austere and resigned, preserves the bed of her lord, shall enjoy till death and after her the dáyádas"(5) would be inconsistent. Therefore that the wife takes the wealth of a sonless man, divided and not re-united, is surely the better conclusion.

72. As for the texts which declare the non-existence of woman's right to take the wealth: "Wealth is created for sacrifices and all those who are unauthorised therefor, are not sharers of heritage but only obtain food and clothing,"(6) and "Wealth is prescribed for sacrifices, and one should bestow it on deserving objects, for virtue

* This passage is here found in Orient. Lib. MS. and the Madras Telugu Edn.:—Sangrahakara also says: Where the brothers are divided and there is none reunited, the wife directed by the spiritual preceptor and others to raise issue shall take the wealth." This is incorrect because there is no reference to Niyoga in the text. "The wife, the daughters also, etc." If it is said that even if not expressed it should be so understood on the strength of the texts of Gautama and others, (we say) not so, because the texts of Gautama and others are intended to bear a different meaning, etc.

(1) Manu, ix. 146.
(2) Gautama, xxviii. 21, 22.
(3) Manu, ix. 146.
(4) II Cole., Dig., 535.
(5) *Ibid*, 595, ccccIxxvii.
(6) Not found.

made, and not on women, fools and vicious men,"(1) they relate only to wealth acquired for the purpose of sacrifices. As for what has been said by Kátyáyana also: "Unclaimed wealth goes to the King after setting apart what is required for women, servants and funeral ceremonies, excepting a Srotriya's wealth and that shall be given to a Srotriya,"(2) the meaning is, that, leaving what is necessary for the food and clothing of women and for the Sraddha, etc., of the owner, the wealth of the heirless man to the King, but that a Srotriya's wealth after setting apart for women, servants and funerals goes to a Srotriya and not to the King. And as for what has been said by Nárada: "In other cases than those of Brahmins, a King intent on virtue shall give his women some maintenance. Thus is the law as to heritage declared,"(3) both these texts refer to women not wedded, because the word "*patni*" is not used. As for what has also been said by Hárìta: "If a young widow is of bad conduct, then maintenance should be given for the preservation of her life," (4) that refers to the case of a woman suspected of infidelity. As for the text of Prájápati: "An ádhaka of rice should be given to a widow till death,"(5) and what has been said in another Smriti: "For food a prastha of rice with fuel in the afternoon,"(6) these two texts are of the same meaning as that of Hárìta. And the Sruti: "Therefore women are devoid of *indriya* and are not sharers,"(7) is intended to show that the wife has no share in the *Patnivatagraha*. The word "*indriya*" denotes *soma* as the use of the word in the sense of *soma* is seen in the passage "*indriya* is *soma* drink." As for the text of Brihaspati prohibiting the taking of immoveables by the wife: "Whatever wealth the divided man had, mortgages and other kinds, his widow shall take leaving immoveables"(8) that is intended to prohibit the sale of immoveables without the consent of the dáyádis; because, otherwise it would be inconsistent with the text: "Having taken the movables, the immoveables, the baser metals, gold, grain, liquids and clothes, she should cause to be offered the monthly, yearly and other sraddhas. She should also honour the paternal uncle, the spiritual preceptor, the daughter's son, the husband's sister's son and maternal uncle, the aged, the helpless, and the guests with oblations and charities (liberal gifts)."(9)

Re-union.

73. Manu states the mode of partition amongst the re-united thus: "If those who are divided and live together, divide again, the division shall then be equal. In that case there is no seniority."(10) Since by "the division shall then be equal," inequality of partition has been prohibited, the prohibiting of unequal partition again by, "In that case there is no seniority," is for the purpose of allowing

(1) II Cole., Dig., 538 & 602.
(2) Not found.
(3) Narada, xiii. 52.
(4) Cf. 2 Cole., Dig., 536, ccccix.
(5) Not found.
(6) Brihaspati, xxv. 69.
(7) Cf. Baudhayana, ii. 2, 3, 43 and note.
(8) Brihaspati, xxv. 53.
(9) Brihaspati, xxv. 50, 51.
(10) Manu, ix. 210.

unequal partition in accordance with wealth in the case of those reunited with unequal wealth.

74. As to the question with whom there may be re-union, Brihaspati says: "He who, being divided, lives again through affection in one house with father, brother or uncle, is said to be re-united with him."(1) A son or other person who being first divided from father or other person, lives again with him through affection is said to be re-united.* Some say there may be re-union with anybody.

75. Brihaspati in some cases lays down unequal partition among the reunited: "If any one among the reunited obtain additional wealth by his learning, valour, etc., two shares should be given to him and the rest are equal sharers."(2) The meaning is that in the additional wealth acquired by learning, etc., two shares should be given and not in all wealth. This is for the purpose of making divisible even acquisitions made without detriment to the reunited wealth.

76. Yájñavalkya points out the successor to the wealth of the sonless reunited: "Of the deceased reunited, the reunited, and of the deceased uterine brother, the uterine brother shall take the share, or give it to (a son subsequently) born."(3) The meaning is this: The share of a deceased reunited brother, the other reunited brother shall give to a son born of his wife whose pregnancy was not known at the date of the partition. In the absence of a son, the re-united alone takes, not the wife, etc. The wives and the unmarried daughters get maintenance only. So says Nárada: "They should maintain his women till death, if they preserve the bed of their lord; let them cut it (maintenance) off in the case of the rest. If there be a daughter, she should be maintained out of her father's share; till marriage she takes a share and afterwards her husband should maintain her."(4) "Of the uterine brother, the uterine brother." [The re-united uterine brother shall give the share of his reunited uterine brother to his son subsequently born and in his absence shall take it himself. Not the reunited half-brother.] This is an exception to what has gone before. He himself lays down that, where there are a reunited half-brother and an unreunited uterine brother, they both divide and take the wealth: "The half-brother reunited and not the half-brother shall take wealth. The uterine brother though not reunited shall take and not the half-brother."(5) The half-brother reunited shall take the wealth of his half-brother, but not the unreunited. The uterine brother though not reunited shall take the wealth of his uterine brother, not alone the half-brother reunited. Hence alone says Manu: "If among them the eldest or the youngest does not take a share or if either of them dies, his share is not lost. The uterine brothers shall come together and divide it, as also the brothers reunited and his uterine sisters."(6) This is the meaning: If in the

* This paragraph down to the asterisk is omitted in Adyar Lib. MS.

(1) Brihaspati, xxv. 72.
(2) *Ibid* 77.
(3) Yajnavalkya, ii. 138.
(4) Narada, xiii.
(5) Yajnavalkya, ii. 139.
(6) Manu, ix. 211, 212.

midst of reunited half-brothers, any one the eldest, youngest or middle-most fails to take his share owing to absence in another country, etc., his share shall not be lost. It shall be kept apart; the reunited alone shall not take it; but the share of the reunited so kept apart, the unreunited uterine brothers, the reunited half-brothers and the uterine sisters, though gone to a foreign country, shall return and, having assembled, shall divide without greater or less shares.

77. Others think that the meaning of the text: "The uterine brother though not reunited shall take and not the half brother,"(1) is this: Where there are reunited half-brothers and unreunited uterine brothers, these alone take, not the half-brothers though reunited. As for the text of Manu: "If among them the eldest or the youngest, etc.," which lays down that the reunited half-brothers and unreunited uterine brothers share the wealth, that applies to cases where there are both moveable and immoveable properties. Hence alone Prájápati: "The concealed wealth and moveable property shall belong also to the reunited. But the land and house, the unreunited shall take according to their shares."(2) This is the meaning: To the reunited half-brothers the concealed wealth and property in the shape of moveables shall belong according to their shares, and the immoveables such as house or land shall belong to the unreunited uterine brothers according to their shares. The text of Yájnavalkya, however, applies to a case where there is one or other of moveable or immoveable properties. Here what is proper may be accepted.

78. Where there is no reunited half-brother, then the father or paternal uncle, whoever is reunited, he alone takes. So also Gautama: "When the reunited dies, the reunited takes the wealth."(3) Where there is neither father nor paternal uncle reunited, then the unreunited half-brother takes. In default of him, the unreunited father; in default of him, the mother; in default of her, the wife. So says Sankha: "The wealth of the sonless deceased goes to the brother; in default of him, to the parents; and in default of them, to the eldest wife."(4) [Eldest] superior in qualities and chaste, not the first married. Where there are sons of the reunited brother and also wife, Nárada lays down the mode of succession: "Where the husband is dead, his wives having neither brother, father nor mother, and all his sapindas shall divide his wealth according to their shares."(5) [The wives having neither brother, father nor mother] the wives having no brother or parents of their husband. [All sapindas] the brother's sons, etc. The meaning is that in such a case the partition of the wealth of the reunited is according to their fathers in the case of brother's sons and according to husbands in the case of wives.

(1) Yájnavalkya, ii. 139.
(2) Not found.
(3) Gautama, xxviii. 28.
(4) II. Cole., Dig., 532, cccxiii.
(5) Not found.

79. In the absence of wives, the sister takes the share of the sonless re-united. So also Brihaspati: "Even according to law, she who is his sister next deserves to get the share of the sonless man who has neither wife nor father."(1) The word '*cha*' indicates, in addition, the absence of brothers and mother. Some, however, read: "She who is his daughter, etc." and say that in the absence of the wife the daughter takes. In the absence of the daughter and the sister, all the sapindas shall take his wealth in the order of their nearness according to the text: "Whoever is the nearest sapinda, to him the wealth belongs,"(2) because of the absence of those specifically mentioned. Hence alone says Brihaspati: "If a sonless man die without wife, brother, father or mother, all the sapindas shall divide his wealth according to their shares."(3)

Succession to Hermit, etc.

80. Yájñavalkya states who takes the wealth of a hermit, an ascetic or a perpetual bachelor: "The heirs to a hermit, an ascetic or a bachelor are in order the spiritual preceptor, the virtuous disciple and a fellow-student of the same order."(4) Here the spiritual preceptor takes in the inverse order the wealth of a perpetual bachelor, not the father and others. But the wealth of a bachelor for the time being (upakurvána), the father and others alone take. The wealth of an ascetic, however, the good disciple shall take, who learns, remembers and practises the science of the supreme spirit; because a disciple of evil conduct does not deserve a share. The wealth of a hermit, a fellow-student of the same order takes. Dharmabhrátá] one having the same preceptor. Ekatirtha] one belonging to the same order. Dharmabhrátráikatirtha] one having the same preceptor and belonging to the same order.

81. Or (it may be) the wealth of a hermit, an ascetic or a bachelor, the spiritual preceptor, the good disciple and the fellow-student of the same order take in order. The meaning is that in the absence of the preceding, the succeeding takes. As for what has been said by Vasishtha: "Shareless, however, are they that have entered another order,"(5) that is intended to prohibit taking of wealth by a man of one order to a man of another order, but not to forbid people of the same order from inheriting to each other.

82. But (it may be objected) these have no right to wealth; how then can there be any division of it? Because to them is forbidden the means of acquiring wealth such as acceptance of gift, etc.; and because of the text of Gautama: "Now the religious mendicant shall have no store."(6) That is not correct. Since the text says: "He may make an accumulation of wealth for a day, a month, six months or a year; he should give it up in the month of ásvayuja,"(7) the possession of wealth is permitted to a hermit. And an ascetic

(1) Brihaspati, xxv. 75.
(2) Manu, ix. 137.
(3) Brihaspati, xxv. 60.
(4) Yájnavalkya, ii. 137.
(5) Vasishtha, xvii. 52.
(6) Gautama, iii. 11.
(7) Yájnavalkya, iii. 47.

surely has his cloths, books, etc., (as shown) by the text, "An ascetic should, however, wear cloth for covering his privy parts. He should also take what is required for (the practice of) yoga and similarly his sandals."(1) Even the perpetual bachelor may have cloths, etc., for the protection of his body. Surely, there may a partition of them.

Persons excluded from Inheritance.

83. Manu states those that do not deserve inheritance: "Shareless are the eunuchs and the fallen. So are the born blind and deaf, as also madmen, idiots and the dumb and they that are limbless."(2) They that are limbless] those that have a limb maimed by disease.

84. Nárada also: ' 'The hater of parents, the degraded, the eunuch and he who is guilty of a minor sin—these though aurasas do not get a share; how can they, if kshetrajas ?"(3)

85. Vasishtha also: "Shareless, however, are they that have entered another order."(4)

86. Yájñavalkya also: "The eunuchs, then the degraded, their sons, the cripple, madmen, idiots, the blind and those suffering from an incurable disease, etc., should be maintained; these are shareless."(5) Their sons [the sons born of the degraded. By the word, 'etc.' the dumb, etc., are indicated. These are shareless.] They do not inherit; but they should be maintained, that is, supported by giving food and clothing only.

87. Manu states the sinfulness of not so maintaining them: "It is proper for a wise man at all times to give these persons food and clothing according to his ability; otherwise he becomes degraded."(6) 'At all times' means 'for life.'

88. Devala says that a degraded man need not even be maintained: "To them, excepting the degraded, food and raiment shall be given."(7) By the word "the degraded," their sons also are indicated; because of the text of Baudháyana: "Let him maintain them, excluding the degraded and their issue."(8) Nor need they that have entered another order be maintained. Hence alone Vasishtha: "Shareless, however, are they that have entered another order."

89. The sons, however, of those who do not deserve inheritance take shares. So says Devala: "Their sons if free from defects shall get their father's share of the inheritance." The aurasa and the kshetraja sons of the shareless, if free from the defects of impotence, etc., obtain shares but not the adopted son and others. Hence alone Yájñavalkya exclusively specifies: "The aurasa and the kshetraja sons of these, if defectless, are sharers."(9)

(1) Not found; see Mit, II, viii. 8.
(2) Manu, ix. 201.
(3) Narada, xiii. 21.
(4) Vasishtha, xvii. 52.
(5) Yájnavalkya, ii. 140.
(6) Manu, ix. 202.
(7) II Cole., Dig., 426, cccxxi.
(8) Baudhayana, ii. 2, 3, 40.
(9) Yájnavalkya, ii. 141.

90. The daughters of the shareless should be maintained till marriage and should be married. And the wives, if of virtuous conduct, should be maintained for life. So says the same author: "Their daughters should be maintained till they are put in the care of their husbands; and their sonless wives should be maintained if of virtuous conduct. Unchaste women should be expelled and even so the perverse also."(1)

91. Kátyáyana* points out other shareless persons: "The son of a woman married in irregular order, and he who is born of one of the same gotra, should be expelled; neither of them deserves wealth."(2) Manu also: "A son born of a woman not appointed to raise issue, and one begotten through lust by the brother-in-law—both these do not deserve shares, being, *járajátaka*, born to an adulterer, and *kámaja*, begotten through lust."(3)

Stridhana or Woman's Property.

92. Yájñavalkya states the division of Stridhana: "What is given by father, mother, son† or brother, what is obtained before the (nuptial) fire, what is given on supersession, etc., are declared a woman's wealth. What is given by kinsmen, her *sulka* likewise, and post-nuptial presents—these shall the kinsmen take if she dies issueless."(4) What is obtained before the fire] what is given by the maternal uncle and others before the fire, at the time of the marriage. So also says Kátyáyana: "What is given to women before the fire at the time of the marriage, is called by the virtuous Stridhana given before the fire."(5) Adhivedanika] what is given to a superseded wife on account of her supersession. By the word 'etc.,' is indicated what is acquired by the use of wealth given to her at the time of going to her husband's house. So also Manu: "What is given before the fire, what is given at the time of going to the husband's house, what is given out of affection, what is obtained from the brother, mother, father—these are the six kinds of woman's wealth."(6) "Six kinds" is to exclude a less number, not to exclude a greater.

93. The nature of Adhyáváhanika and Prítidatta Stridhanas is stated by Kátyáyana: "What a woman gets when led from her father's house, that is called Stridhana given at the time of going to her husband's house (adhyáváhanika. What is given out of affection by the mother-in-law or the father-in-law, and what is given for prostrations at their feet, are called Stridhana given out of affection (prítidatta)."(7) What is given by kinsmen] what is given by the kinsmen of the father and mother of the girl. Sulka]

* Another reading gives Vyasa for Kátyáyana.

† Another reading for "son" is "husband."

(1) *Ibid*, 141, 142.
(2) II. Cole., Dig., 439, cccxxxvii.
(3) Manu, ix. 143.
(4) Yájnavalkya, ii. 143, 144.
(5) II Cole., Dig., 585, ccccIxvi.
(6) Manu, ix. 194.
(7) II. Cole.. Dig., 585, ccccIxv & 586, ccccIxvi.

wealth receiving which the girl was given. Anvádheyaka] what is given after marriage. So it is said by Kátyáyana : "What is obtained as the price of household furniture, vehicle, milch cow, and jewels, that is termed sulka. What is obtained by women after marriage from their husband's family is designated Anvádheya, as also that which is obtained from her father's family."(1) In reference to wealth given to women by their father, etc., Kátyáyana mentions a distinction: "Stridhana up to two thousand (panas), excluding the immoveables, should be given to a woman by the father, mother, husband, brother or kinsmen according to their ability."(2) The meaning is that according to ability, property other than immoveable, to the extent of two thousand Kárshápanas, should be given. This rule should be understood to apply to annual gifts. This rule does not apply to gifts once for all for maintenance during several years. Nor is it prohibitory of (gift of) immoveable property. And so Brihaspati: "Let him give adequate wealth and a share of land also if he desires."*(3) Hence also the alienability at her will of Saudayika immoveables is laid down by the same author: "What is obtained by a married or an unmarried woman from her husband's father's house, or from her brother or parents, is declared her Saudayika. (Over) the Saudayika wealth obtained, the independence of women is declared by law. Since this subsistence is given to them out of affection, (they can act, according to their wishes in the sale or gift of them though immoveable."(4)

94. Nárada states, a distinction in regard to immoveables given by the husband: "What is given to a woman by an affectionate husband, she may, even after his death, enjoy or give away as she likes excepting the immoveables."(5) Kátyáyana states, that what has been given by father and others fraudulently, etc., does not become Stridhana: "What has been, conditionally or fraudulently, given by the father, brother or husband is declared not to be stridhana."(6) Jewels given for wearing on festive occasions are 'conditionally' given. "Fraudulently" means by deceit, etc. The same author says that even that which is obtained by art is not stridhana: "What is acquired by (pursuing an) art and what is given by others out of affection—over these the husband has control; but the rest is declared Stridhana."(7) 'By others' means by friends, etc.

95. On the death of a woman having no daughter nor daughter's daughter, daughter's son, nor son, nor son's son, the kinsmen such as husband, etc., take this Stridhana. Here this is the order: On the death of the mother, first the daughter takes. Hence alone has it been said by the same author: "The daughters (take) what

* Omitted in another MS.

(1) II. Cole., Dig., 587, cccclxvi.
(2) Not found.
(3) Not found.
(4) II. Cole., Dig., 594, cccclxxv.
(5) Narada i. 29.
(6) Not found.
(7) II. Cole., Dig., 589, cccclxx.

remains after debts, of their mother; and in default of them the issue."(1) Gautama also: "The Stridhana is for the daughters unmarried or unendowed."(2) In default of daughters, the daughters' daughters take according to the text of Yájñavalkya: "If there be issue of those daughters."(3) Where there are unequal numbers of grand-daughters by different mothers, the division is according to the mothers. So also says Gautama: "According to the mothers should, in law, be the allotment of shares in each branch." (4) Where there are daughters and grand-daughters, Manu says: "Even to those who are *their* (daughters') daughters, according to their desert, something should be given out of affection from the maternal grandfather's wealth."(5) In the absence also of the daughter's daughters, the daughter's sons take the wealth. So says Nárada: "Of the mother, the daughters; in the absence of daughters, their issue."(6) The meaning is that in the absence of daughter's daughters, her issue, that is, the daughter's sons take. In the absence of the grandsons also, the sons take what remains of the mother's wealth after deducting the debts, in accordance with the text of Yájñavalkya: "After the parents, the sons shall divide equally the assets and debts." (7) As for the text of Manu: "On the death of the mother, equally shall all the uterine brothers divide the mother's wealth and also the uterine sisters,"(8) that is not intended to lay down the sharing of the heritage by the sons and daughters together; but is intended to prescribe equality of division when they get a right to the wealth, as indicated by the use of the word "equally." As for what has been said by Sankha and Likhita also: "Equally do all the uterine brothers deserve the mother's wealth; also the maiden (sisters),"(9) that too is of the same import as the text of Manu. Or both these texts relate to Stridhana obtained from the husband's family. On this same subject, Brihaspati: "The Stridhana goes to her issue; the daughter also is a sharer, if unmarried; but if married, she takes not the mother's (wealth)."(10) Issue] male children. As for what has been said by Páraskara: "The Stridhana is declared to be for the daughter if unmarried; the son does not take; if she be married, he takes an equal share," that refers to the case of married but unendowed daughters. Hence alone says Manu: "Whatever Yautaka there is of the mother, that is the share of the unmarried daughters alone."(11) Yautaka] wealth obtained from the father's family.

96. The stridhana of a childless woman of inferior class, the daughter of the co-wife of superior class takes; in default of her, her issue. It is so stated by Manu: "A woman's property, howso-

(1) Yájnavalkya, ii. 117.
(2) Gautama, xxviii. 24.
(3) Yájnavalkya, ii. 165.
(4) Gautama, xxviii. 17.
(5) Manu, ix, 193.
(6) Not found.
(7) Yájnavalkya, ii. 117.
(8) Manu, ix. 192.
(9) II Cole., Dig.. 603, ccccIxxxviii.
(10) Brihaspati, xxv.87.
(11) Manu, ix. 131.

ever given by her father, the unmarried Bráhmani daughter takes, or it shall belong to her issue."(1) The word 'Bráhmani' is intended to indicate superior caste. In the absence of sons, the son's sons take, since they are said to have the right to discharge their grandfather's debts according to the text, "Debts should be paid by the sons and grandsons."(2) If it be said, "Let there be authority to discharge debts; but whence the right to inherit?" (we say) not so; because the heirs alone are said to have the right to discharge debts according to the text of Gautama: "Those that take the heritage shall pay the debts."(3) In the absence also of the grandsons the husband and others take the heritage.

97. Manu here states a distinction according to the difference in the marriage: "In the Bráhma, Daiva, Arsha, Gándharva and Prájápatya forms of marriage, whatever wealth there is, goes to the husband alone if she dies issueless. But, whatever wealth is given to her at Asura and other marriages, that is declared to belong to her mother and father if she dies issueless."(4) The meaning is that the wealth of a woman married in the Bráhma, Daiva, Arsha, Gándharva and Prájápatya forms goes, in the absence of wealth-taking issue beginning with the daughter and ending with the son's son, to her husband and not to her mother and the rest; but that the wealth of the wife married in the Asura, Rákshasa and Paisácha forms belongs to her mother and father. As for what has been said by Kátyáyana, "The gift of bandhus, in the absence of bandhus, goes to the brother,"(5) that relates to the wealth of a woman married in Asura and other forms. Hence alone has it been said by himself, "Whatever paternal wealth was obtained by a woman at Asura or other marriage, that is declared, in the absence of issue, to belong to her parents."(6)

98. Though given by husband and others, the woman's wealth known as sulka, the uterine brother alone takes. So also Gautama: "The sister's sulka (belongs), after the brothers, to the mother."(7) The meaning is that in the absence of brothers it goes to the mother. As for what he himself says, "The husband deserves (to get back) his *sulka*,"(8) that applies to the case of a woman dying after the receipt of *sulka* but before marriage. Hence alone Yájñavalkya: "On her death, he may take back what was given after calculating the expenses of both."(9) What were given to a maiden by a maternal grandfather, such as jewels, these also the uterine brother alone takes. So also Baudháyana: "The wealth of a deceased maiden, her uterine brothers shall take equally; in default of them, it shall belong to the mother; and in default of her, to the father."(10)

99. The uterine brother takes also the wealth of a sonless

(1) *Ibid.* 198.
(2) Yájnavalkya, ii. 50.
(3) Gautama, xii. 40.
(4) Manu, ix. 196, 197.
(5) Not found.
(6) Found in Manu, ix. 197.
(7) Gautama, xxviii. 25.
(8) Cf. II. Cole., Dig., 619. dx.
(9) Yajnavalkya, ii. 146.
(10) II Cole. Dig., 618. Evii.

appointed daughter. So also Paíthínasí: "On the death of an appointed daughter, however, the husband does not deserve her wealth; but it is declared that the wealth of an issueless woman and a maiden should be taken by the brother." If the father of the appointed daughter has an aurasa son subsequently, he alone shall take and not the husband. As for what Manu says: "If an appointed daughter dies issueless, the husband of that appointed daughter shall surely take her wealth without doubt,"(1) that should be understood to refer to cases where there are no subsequently born brothers.

100. As for what has been said by Brihaspati, that in some cases the stridhana of an issueless woman goes to her sister's son and others: "The mother's sister, the maternal uncle's wife, the paternal uncle's wife, the father's sister, the mother-in-law and the elder brother's wife, are declared equal to the mother. If these have no aurasa son, nor daughter's son, nor his son, the sister's son and others shall take their wealth,"(2) the meaning of it is this: In the absence of the husband in Bráhama and other marriages, and in the absence of the mother and father in Asura and others, the sister's son and others take in order, the wealth of the mother's sister and the rest.

101. Yájñavalkya says that in some cases, the husband may take the wealth of his wife though alive and having issue: "The stridhana taken during famine, for religious purposes, in disease and confinement the husband does not deserve to (need not) give back to his wife."(3) In confinement] in prison-house, etc. Having taken the stridhana in the absence of any wealth of his own, he need not repay it. If taken in other circumstances, he shall surely return it. So says Kátyáyana: "Neither the husband, nor yet the son, nor the father, nor the brothers have power to take or give a woman's wealth. If one of these should forcibly consume the stridhana, he shall be made to return it with interest and shall also be punished. But if consumed after consent kindly given, he shall be made to return the capital, if he becomes rich."(4) Devala also: "Livelihood, jewels, sulka and gain are her stridhana. She alone is the enjoyer of it. The husband does not deserve (to take) it when not in distress. If given or enjoyed without necessity, he shall restore it to his wife with interest."(5)

Partible Property.

102. Kátyáyana lays down partible property: "The paternal grandfather's wealth, the father's wealth and what else was acquired by themselves—all these shall be divided at a partition among the sharers of heritage."(6) Acquired by themselves.] Acquired by themselves while living upon the grandfather's wealth or the father's wealth, or with the accumulations (from them); because what is

(1) Manu, ix. 135.
(2) Brihaspati, xxv. 88, 89.
(3) Yajnavalkya, ii. 147.
(4) II. Cole., Dig., 594, ccccIxxv.
(5) *Ibid*, ccccIxviii.
(6) *Ibid*, 478, ccclxviii.

acquired without living upon them is impartible. These three kinds of property left after discharging debts shall be divided. So he himself says: "Having given the debts and affectionate gifts, he shall cause the rest to be divided."(1) If there is not wealth enough for the discharge of debts, let the father's debts also be divided. The same author says that in order to prevent fraud, the heritage and the debts should be scrutinised: "The debts should in this manner be examined with the help of kinsmen. Household furniture, carriages, milch cow, jewels and servants, which are known, shall be divided. In respect of concealed wealth, Bhrigu has prescribed the kosa (ordeal by sacred libation)."(2) Here the reference to kosa is intended to prohibit other ordeals. So also the same author: "In cases of partnership as in cases where there is suspicion or bad faith at a partition among the heirs, this kosa ordeal should be administered."(3)

Impartible Property.

103. Yájñavalkya lays down what is impartible wealth: "What is acquired by one without detriment to the father's wealth, a friend's gift and a gift at marriage—these do not belong to the sharers of heritage. He who recovers wealth that, having come by regular succession, was lost, shall not give it to his co-sharers; nor his acquisition by learning."(4) What is acquired by himself without detriment to the father's wealth, by agriculture, etc., what is acquired by learning, etc., what is obtained by marriage, these shall not belong to brothers and the rest. Whoso among the sons, with the permission of the rest, recovers wealth which having descended in regular succession from father, etc., was taken away by thieves, etc., that wealth goes to him alone. But in the case of land, the recoverer takes one-fourth and the rest is common to all. So also Sankha: "If any one recovers by (his own) labour property previously lost, let the rest take their due shares after giving a fourth to him."(5) Similarly acquisitions by learning, teaching the Vedas, etc., belong to him (the acquirer) alone. "Without detriment to father's wealth," should everywhere be understood. Hence alone Manu: "What is acquired by labour, without trenching on the father's wealth, he need not give to the co-sharers; nor what is gained by learning."(6) By labour] by service, etc., and also by agriculture, etc. The reference to 'father' is intended to include undivided co-parceners. Vyása also: "Acquisitions by learning, wealth gained by prowess and Saudàyaka—these belong to himself and cannot be followed at the partition by the co-sharers." (7)Kátyáyana states the definition of impartible acquisitions of learning: "The wealth gained by learning acquired from another, while enjoying

(1) *Ibid*, 479, cccIxix.
(2) *Ibid*, 484, cccIxxiv.
(3) Cf. I Cole., Dig., 345 & II *Ibid*, 292, 293.
(4) Yájnavalkya, ii. 148.
(5) II. Cole., Dig., 464, cccIx.
(6) Manu, ix. 208, Cf II. Cole., Dig., 451.
(7) II. Cole., 444. cccxlvi.

another's board is known as gains of learning; the winning of a prize, previously fixed, for an explanation with (the help of) his learning is also a gain of learning and is not directed to be partitioned. What is obtained from a disciple, by officiating at a sacrifice, by (answer to) a question, by the determination of a doubtful question, by boast of his knowledge, by disputation and by superior Vedic learning; what is acquired by defeating an adversary in learning, after having previously fixed a stake,—these are also gains of learning and Brihaspati has declared them indivisible. This rule obtains among the artisans also. What is obtained in excess of the (proper) price, what is made by the strength of learning, and what is acquired from one who performs a sacrifice and likewise from the disciple—these are said to be gains of learning. Hence what is otherwise acquired is common." (1) Hence the meaning is that what is other than gains of learning, having been acquired by the use of wealth belonging to the undivided father and the rest is common to the undivided members.

104. Narada says that even wealth acquired by learning is partible in some cases: "He who maintains the family of a brother who is acquiring learning, shall, though unlearned, obtain a share of the gains of his learning,"(2) Kátyáyana also: "Wealth acquired by brothers to whom learning was imparted in the family or by the father and wealth gained by prowess, Brihaspati has declared to be partible."(3) The wealth of brothers who received their learning from the uncle and others in an undivided family, or from the father, as well as gains of prowess, is partible. Vasishtha prescribes a double share to the acquirer in wealth acquired without detriment to the paternal wealth: "Amongst them, he by whom acquisitions were made shall take a double share."(4) As for the text: "Partition is declared to be equal in (the case of) wealth acquired by common exertion,"(5) that applies to acquisitions by other means than learning, namely, agriculture, etc. Gautama states the allotment of shares in impartible gains of learning at the desire of the acquirer: "Even his self-acquisition, the learned may give to his learned co-heirs if he so desires."(6) If unwilling, Narada says: "A learned man need not, if unwilling, give a share of his wealth to the learned co-sharers, if the wealth was acquired without recourse to the paternal wealth."(7) Even if willing, he shall not give a share to the unlearned. So says Kátyáyana: "In no case shall the gains of learning be given by a learned man to the unlearned (co-sharers). But that wealth may be given by a learned man to those (co-sharers) who are of equal learning or superior."(8) The same author says that, like the acquisitions of learning, wealth acquired by valour also is impartible: "Wealth gained by valour and by learning, and also what is declared Stridhana—all these are not at all divisible by the co-par-

(1) *Ibid*, cccxlvii.
(2) Narada, xiii. 10.
(3) II. Cole., Dig., 448 cccxlix.
(4) Vasishtha, xvii. 51.
(5) Manu, ix. 205.
(6) Cf. Gautama, xxviii. 30.
(7) Narada, xiii. 11.
(8) II. Cole., Dig., 449, cccl.

ceners at a partition ; and what is got under the flag, that too is declared not to be partible."(1) The definition of " wealth got under the flag," is given by himself : " What is got in battle after putting the enemy's forces to flight and risking his life for his master is known as ' wealth got under the flag.' "(2) Brihaspati also : "What is given by the grandfather, the father and the mother belongs to him and should not be taken away ; likewise, the gains of prowess and the wife's wealth."(3) The nature of wealth gained by prowess has been stated by Kátyáyana: "Where a man incurring risk does a dangerous act and a favour is bestowed by the master pleased with the act, what is then obtained is 'wealth gained by valour.'"(4) Vyása lays down a double share to the acquirer in the gains of valour, as in the gains of learning, if the acquirer was living on the wealth of the father and others : " Where one acquires wealth by valour, etc., having recourse to a common thing, a vehicle or a weapon, there the brothers are sharers. To him two shares should be given and the rest share equally."(5)

105. Manu mentions other impartible things also : " Cloths, vehicles, ornaments, cooked food, water, women, yogakshema, pathways, they consider impartible."(6) Cloths] cloths that have been worn. The cloths of the father should, after his death, be given to the eater at the sraddha. So also Brihaspati : "After honouring the eater at the sraddha with perfumes and garlands of flowers, he should give him the cloths, ornaments, beds, etc., and also the vehicles, etc., of the father."(7) Other cloths, however, are surely divisible. Vehicles] horses, palanquins, etc. Whatever was mounted on by a person belongs to him alone. Vehicles not used are divisible among them all. Even as regards ornaments, whatever is worn by a person belongs to him alone ; the unworn jewel is common and surely divisible, because of the qualifying word "worn" used by himself, in the text : "The co-heirs should not divide the jewels that were worn by women while the husband was alive; for, by dividing, they become degraded."(8) Cooked food.] Boiled rice, etc. It should be eaten according to circumstances and is not divisible. Water] a reservoir of it, namely, wells, etc. If unequal, it should be enjoyed by turns and should not be divided at a valuation. Women] female slaves. These also, if unequal, should be made to do work by turns So also Brihaspati : " A single female slave should be made to work in each house according to their shares. If many, they shall be given in equal shares. This rule applies to male slaves also."(9) But women kept by the father, even if equal, should not be divided. So also Gautama : "No partition of women united."(10) *Yoga* is a sacrificial act attainable with (the aid of) Srauta and Smarta fires. *Kshema* means acts helping to preserve what has been gained, such as gifts

(1) Not found.
(2) Cf. II Cole., Dig, 466, ccclx. 3.
(3) Brihaspati, xxv. 78.
(4) Cf. II Cole. Dig. 465, ccclx.
(5) *Ibid* 281, cx.
(6) Manu, ix, 219.
(7) Brihaspati, xxv, 85.
(8) Manu, ix, 200.
(9) Brihaspati, xxv. 82, 83.
(10) Gautama, xxviii. 47.

outside the altar and other charitable acts such as the construction of tanks, gardens, etc. Both these, though acquired with detriment to the paternal wealth, are indivisible. So it is stated by Laugákshi: "Wise men say that *Kshema* is a charitable act and *Yoga* is a sacrificial act. These have been declared impartible and also a bed or a seat." Or by the word *Yogakshema* are indicated weapons, chamaras, umbrellas, shoes, etc. *Prachára.*] The paths of entrance and exit in houses and gardens. These are also impartible. As for the impartibility of land which has been declared by Usanás: "Indivisible among the sagotras even of the thousandth generation are sacrificial presents (to the officiator), lands, vehicles, cooked food, water and women,"(1) that is intended to show that lands obtained by acceptance of gift should not be divided by the son of a Brahmin woman with the son of a Kshatriya woman, in accordance with the Smriti: "Land obtained by acceptance of gift should not be given to the son of the Kshatriya wife."(2)

106. Others are of opinion that even cloths, etc., are divisible. So also Brihaspati: "It has not been well considered by those by whom cloths, etc., have been declared impartible. The wealth of the prosperous may depend on cloths and ornaments. If common, it cannot be enjoyed; nor is it competent to any *one* to give it away. It must be skilfully divided; otherwise it will be useless. A division should be made by selling cloths and jewels, by collecting the written debts, by exchanging cooked food for uncooked rice. The water of wells and tanks should be taken and enjoyed in succession. A single female slave should be made to work in each house according to shares. If many, they should be given in equal shares. This rule applies to male slaves also. The gains of *Yogakshema* should be divided equally. The pathways should be divided by the coparceners according to their shares." (3) It would be improper to say that the texts of Manu and Usanas declaring the impartibility of cloths, etc., should not be followed; for, where texts conflict, it is proper to determine their (respective) spheres of application and not to contradict them. The texts of Brihaspati refer to unworn cloths, etc., while the texts of Manu and others refer, as was said before, to cloths already worn; thus their spheres of application are determined.

Division of Wealth discovered after Partition.

107. If at the time of partition wealth had been fraudulently hidden and it was afterwards brought to light, all that, they should divide equally. So also Yájñavalkya: "What wealth, concealed from one another, is discovered after partition they shall divide again in equal shares. Thus stands the law." (4) The word "equal" is to prohibit unequal division. The plural "shall divide" is to

(1) Not found.
(2) Brihaspati, xxv. 30.
(3) *Ibid*, 79, 84.
(4) Yajnavalkya, ii. 126.

show that it is not to be taken by him alone by whom it was found. Manu also: "If when all debts and wealth have been divided according to law, anything is afterwards found, all that should be divided unequally."(1) Like concealed wealth, even that which has been divided equally contrary to the direction of law, should be divided equally. So also Katyayana: "Wealth concealed from one another, what is misdivided and what is obtained afterwards shall be divided equally. So says Bhrigu."(2) This being so since a partition is prescribed only of wealth fraudulently concealed and afterwards discovered, it is conveyed that there is no re-division of wealth once divided. As for what Manu lays down: "If, after partition was made, any common thing is discovered, then that is not considered partition; it should surely be made over again,"(3) that should be understood to refer to partition before income and expenditure have been calculated, because otherwise the texts: "Wealth concealed from one another, etc.,"(4) and others would become useless. Here in defrauding one another there is sin also incurred. So also the Sruti. "Whoso deprives a sharer of his share, him (the sharer) destroys. If he does not destroy him, his son or his grandson he destroys."(5) This is the meaning: He who ejects a sharer, (*i.e.*, one who deserves a share), from his share, (*i.e.*, turns him out or does not give him his share), then he who lost his share destroys him, his depriver, *i.e.*, makes him a sinner. If he does not destroy him, then he destroys his son or his grandson. As for the text of Manu: "If he who is eldest, through avarice, injures his younger brothers, then there shall be no share to the eldest, and he should also be punished by the Kings."(6) That is intended to lay down that even the eldest son though independent incurs sin by stealing common property and more so the younger sons who are not independent; and not to lay down that the eldest alone incurs sin. Otherwise the Sruti would be restricted by the Smriti.

Effect of Partition.

108. Narada states the powers of divided co-parceners: "Where there are many born of one (father), having separate duties, having separate dealings, having separate implements of work, if, not being agreed in business, they give or sell of their own accord, they may do all that as they please, for they are masters of their own wealth."(7) Brothers born of one person, being divided, may, without each other's permission, do all religious, charitable and other acts of duty capable of accomplishment by wealth. Similarly, they may do agricultural and other business possible only by expenditure of wealth. Again, they may have separate mortars, pestles and other tools for work. Similarly, if the brothers don't

(1) Manu, ix. 218.
(2) II, Cole., Dig. 485. ccclxxvii.
(3) Not found.
(4) Yajnavalkya, ii. 126.
(5) Not found.
(6) Manu, ix. 213.
(7) Narada, xiii. 42, 43.

assent to their acts, they may act without heeding them. If likewise the divided brothers of their own accord give, sell or receive, they may do all this as they please. Therefore, those who are divided are masters of their wealth, that is, independent owners of it.

109. As for the text of Brihaspati: "The sharers of heritage, divided or undivided, are equal as regards immoveables. A single person is powerless over the whole to give, mortgage or sell it,"(6) it should be explained thus: Among the undivided, the consent of all is necessary, since, property being common, one (by himself) is not the master. Among the divided, the consent of all is for convenience by removal of doubts as to who were divided and who undivided; and not because of the powerlessness of a single person. Hence even without the consent of the divided, the transaction is surely valid. As for another Smriti: "By the consent of the village, the kinsfolk, the neighbours, the co-sharers and by the gift of gold and water—by these six, passes land."(1) The meaning of it is this: Consent of villagers, according to the Smriti: "Acceptance of a gift should be public, especially of land,"(2) is required only for the publicity of the transaction; not that the transaction is not valid without the consent of the village. The consent of neighbours is to get rid of any doubt as to boundaries. Similarly, the consent of co-heirs also is only for the convenience of business by the removal of doubts as to who are divided. Also there should be gift of gold and water when land is sold. The meaning is that the sale of land should be in the form of a gift after giving gold and water, since the sale of land is prohibited according to the text: "There in no sale of immoveables. Let him make a mortgage with permission,"(3) and since gift and acceptance have been lauded by the text: "He who receives and he who gives land—they both do a meritorious act and surely go to heaven."(4)

Evidence of Partition.

110. Where partition is denied, Yájñavalkya states the proofs or determination (of the matter): "On denial of partition, the fact of partition should be determined by the evidence of kinsmen, relations and witnesses and documents and by separate houses and lands."(5) Kinsmen] paternal relations—Relations] maternal uncles and others Documents] deed of partition. By these should the determination of partition be made; and by separate houses and lands. Nárada states also another mark of partition: "Where there is a doubt as to partition among co-parceners, the determination is by (evidence of) kinsmen, by deed of partition and by (their) engagement in separate transactions. Among undivided brothers, (the performance of) duty

(6) Brihaspati, xxv. 93.
(1) 1 Cole. Dig. 441, xxxii.
(2) *Ibid*, 448, xxxii.
(3) Not found.
(4) 1 Cole. Dig. 444 xli.
(5) Yájnavalkya ii, 149.

is one. Where there has been partition, duty is distinct for them all. Being a witness, suretyship, gift and receipt, these are permitted among divided brothers but not among the undivided. Gift, receipt, cattle, food, houses, lands, servants, as also wealth, religious duty, expenditure and income should be understood to be separate among divided brothers. They among whom such dealings with their own property are found, should be known to be divided even without a document."(1) Brihaspati also: "Those who have separate income, expenditure and wealth, those who make loans to each other and trade with each other are doubtless divided."(2) In the absence of witnesses, etc., partition should be determined by such signs as (mutual) loans, trade, etc. So he himself says: "Crime ownership of immoveables and prior partition among the co-parceners by inference should be known, where there are no witnesses."(3) He himself states, also the decisive marks of crime, etc.: "The relationship between the families, malice and discovery of stolen wealth are proofs of crime: enjoyment of immoveable property is a sign of ownership and separate property of partition."(4) The relationship between the families]inimical feeling between the ancestors. *Vyaghata.*] Jealousy of each other. *Hodha*] discovery of health and document forcibly taken away. It should be understood that mutual borrowing, etc., are evidences of partition, since these are prohibited among the undivided parceners. So also Yajñavalkya: "Among brothers, husband and wife, and father and son, if unseparated, it is declared that there is no suretyship or loans or giving evidence."(5) Where it is impossible to determine by means of witnesses, documents, etc., the (resort to) ordeals ordained by the text: "Where even inference is powerless, let it be determined by ordeals,"(6) is prohibited by Vriddha Yajñavalkya: "Where there is a doubt as to partition, the fact of division should be determined by relations witnesses and documents: there shall be no ordeal."(7) As to how in such a case a determination should be made, Manu answers thus: "Where there is a doubt among the co-heirs as to partition, a division should again be made between them though presiding separately."(8) The meaning is that where the doubt is not dispelled even by inference, a re-division should be made. As for what has been said by himself, "once does the share fall; once is a girl given; once is a gift made these three are done but once,"(9) that should be understood to refer to cases where there is a possibility of determination by inference, etc. Brihaspati lays down that he who goes back upon a partition made by himself and about which there is no doubt, should be punished: "He who, having at his own desire separated himself, disputes again, should be confined by the King to his own share and punished for obstinacy."(10) Anubandhatah] for obstinacy.

(1) Narada, xiii, 36-9
(2) Brihaspati, xxi, 92.
(3) *Ibid*, 90.
(4) *Ibid*, 91.
(5) Yájnavlkya, ii, 52.
(6) Cf. Narada 1, 247 & Brihaspati x. 3.
(7) Not found.
(8) Not found.
(9) Manu xi., 47.
(10) Brihaspati, xxv., 95.

DATTAKA-MIMAMSA.

A TREATISE ON ADOPTION,

BY NANDA PANDITA.

SECTION I.

Adoption why, and by whom to be observed—By a woman when valid—By what precept ordained—What descriptions of sons to be adopted in the present age.

1. Having prostrated himself before Vináyaka, whose two feet are worthy to be adored by the world, Nanda Pandita argumentatively discusses the subject of affiliation.

2. By whom; how qualified; at what time; for what purpose; from whom; and who may be adopted as a son? That, on which former writers have not explanatorily treated, is fully propounded here.

3. On this subject Atri says: "By a man destitute of a son only, must a substitute for the same always be adopted: with any amount of inconvenience (yasmát tasmát prayatnatas), for the sake of the funeral cake, water, and solemn rites."(1)

4. "A man destitute of a son (aputra,)" is one to whom no son has been born, or whose son has died: for a text of Saunaka says: "One to whom no son has been born or whose son has died, having fasted for a son, &c."(2) Another reading recites: "The impotent man or one whose offspring has died."

5. "By a man destitute of a son, &c." Since it is shewn by this that the being so destitute is a cause; in omitting to adopt a son a sin is incurred; for the precept enjoining the production of a son being positive, it results that the contravention of it is the cause of a sin; and on defect of any son in general, exclusion from heaven is declared in this text: "Heaven awaits not one destitute of a son, &c."(3) And further in the following passage also, a son in general is shewn to be the cause of redemption from debt. "A Bráhmin immediately on being born, is produced a debtor in three obligations: to the holy saints, for the practice of Brahmacharya; to the gods, for performance of sacrifice: to his forefathers, for offspring. Or he is absolved from debt who has a son: has performed sacrifices: and practises Brahmacharya."(4)

6. "By a man destitute of a son only."] The incompetency of one having male issue is signified by the term "only" in this passage.

(1) Not found.
(2) Not found.
(3) Vasishtha, xvii. 2.
(4) *Ibid*, xi. 48.

7. By this the word 'distress' (ápat) used by Manu in the following text is explained: "Whom the father or mother during distress, may give as a son, confirming the gift with water, &c."(1) And it is explained in the same manner by Aparárka "during distress, *i.e.*, the adopter having no son."

8. Or it may be interpreted "during a famine and so forth", as in the Mitákshará. "By specifying distress, it is intimated that the son should not be given, unless there be distress: this prohibition regards the giver." Accordingly, Kátyáyana: "During a season of distress the gift or even sale [of a son] may be made: otherwise the same must not be done: this is the injunction of the holy institutes.(2)

9. Manu also: "A son of any description must be anxiously adopted by one who has none: for the sake of the funeral cake, water, and solemn rites: and for the celebrity of his name. He who has no son may appoint his daughter in this manner to raise up a son for him, &c., &c."(3)

10. As for the instance, appearing, of the adoption as sons of Devaráta and the rest by Visvámitra, and others, although possessing male issue that, from its opposition to the revealed law, as contained in passages before quoted (v. § 5), must be understood in the same manner as the eating the haunch of a dog, and so forth, not to imply the existence of a revelation authorizing the act.

11. It is not to be argued that a revelation recorded from recollection (Smriti), does not supersede the indication of a revelation: for it is of greater authority, being supported by direct passages of revealed law, such as: "Heaven awaits not one destitute of male issue;" and so forth.

12. But, however, if you pertinaciously insist on the superior cogency even of the indication of a revelation, to a revelation recorded from memory then we accede that a man, though possessed of male issue, may adopt another son with the sanction of such issue, on account of the revelation indicated in the following passage: "By that which our father recognized we abide. We place you before us, you, we follow, &c." Neither should it be urged that this regards the making an elder son, not the adoption of a son; for the one would be invalid if the other may not be done. It is useless to enlarge.

13. "By a man destitute of a son." The word "son" here used is inclusive also of the son's son and grandson, for [through these] the exclusion from heaven, denounced in such passages as "Heaven awaits not one destitute of a son" is removed, since it is declared in the text subjoined, that the mansions of the happy are attained through the grandson and the other. "By a son a man conquers worlds: by a son's son he enjoys immortality: and afterwards by the son of a grandson he reaches the solar abode."(4)

(1) Manu, ix. 168.
(2) I. Cole. Dig., 406, vii.
(3) II. Cole. Dig., 421, cccxii.
(4) Vasishṭha, xvii. 5; Manu, ix. 137, etc.

14. Nor can it be alleged that the adoption of a son is for the sake of the funeral obsequies; for according to the text it appears that the other two also are competent to perform such rites. "The son, the son of a son and the son of a grandson, or like these the offspring of a brother, &c., &c."(1)

15. 'By a man destitute of a son.'] From the masculine gender being here used, it follows that a woman is incompetent [to adopt]. Accordingly, Vasishtha ordains: "Let not a woman either give or receive a son in adoption, unless with the assent of her husband."(2)

16. From this, the incompetency of the widow is deduced since the assent of her husband is impossible.

17. Nor should it be argued that the assent of the husband is requisite for a woman whose husband is living, because she is subject to control, but not so to the widow; for mention being made of woman in general, dependency on control is not the cause: and [were it,] her subjection to the control of kinsmen exists as shewn in the following text: "On default of these the kinsmen, &c."(3)

18. If it is contended, then, that she may adopt a son with the assent of the kinsmen even; it is wrong: for the term "husband" would become indefinite in meaning and the purpose would not be attained. Now the purpose of the husband's sanction is that the filiation, as son of the husband, may be complete even by means of an adoption made by the wife.

19. Accordingly [as appears], from this aphorism ("lastly of the mother, first of the father, &c."), the connection of the son affiliated, through the wife to both, is declared in the following compendious rule of Satyáshádha: "Of the son by marriage: the Kshatriyá or wife's son: the son made: the son of an appointed daughter: the son affiliated through the wife: the son of a marriage according to the Ásura form: the son of a female given as a gratuity [the relation of lineage], to both parents [obtains]. Now the connection of lineage to the father is the filiation as his son; and such filiation proceeds from the sanction only of the father and not from the act of adoption: for the agent of that, in this instance, is the wife.

20. "'The son by marriage,' is the son received with a pregnant bride (Sahódha.) 'The son affiliated through the wife,' is the son demanded by the wife (Strí-yáchíta) or the son obtained through the wife (Strí-sattáka.) 'The son by a female given as a gratuity,' is one begotten on a damsel obtained as a fee at a sacrifice. The rest are obvious. Thus expounds Sabarasvámí."

21. And in the case in question, the wife being mentioned as the instrumental means, a primary author of the act is obtained; for otherwise, one accepted in adoption by the wife, being son to

(1) H. Cole. Dig., 624, dxiv. (2) Vasishṭha, xv. 5.
(3) Nárada, xiii. 29.

his mother [only], since his connection as lineage to her husband would be wanting, his incompetency to perform the funeral rites of the husband would result; and no father existing, at his marriage, and so forth, the paternal family and other particulars must in consequence remain unspecified.

22. If the case stands thus, then the assent of the wife is requisite for the husband also; for the purpose would be the same. This (if alleged) is wrong; for in consequence of the superiority of the husband, by his mere act of adoption, the filiation of the adopted, as son of the wife, is complete in the same manner as her property in any other thing accepted by the husband.

23. Moreover, Váchaspati, "'"Having offered a burnt offering (Hutvá) with recitation of the holy words, he should take an unremote kinsman, &c." In this text, the indeclinable past participle 'Hutvá,' (having offered, &c.), indicating the government of both verbs, by the same agent, being used: the adoption by one only, who may offer a burnt offering (Homa), is valid: therefore women, from their disqualification to perform such Vedic acts are incapable to adopt."(a)

24. It must not be argued that, since under a text of Saunaka the employment of a priest is consistent with the approved doctrine, the "Homa" may be completed by his intervention: for although that were completed, still would the adoption [by the woman] be imperfect, since she is not competent to perform the prayers requisite for the same.

25. These Saunaka has specified: "And taking him by both hands, with recitation of the prayer commencing ('Devasyatva, &c.:') having inaudibly repeated the mystical invocation, 'Angád-angát, &c.,' having kissed the forehead of the child, &c."

26. Nor does on this view the incapacity of Súdrás to adopt follow: for their ability [to adopt] is obtained from an indication [of Sruti], conclusive in that respect, in this passage: "Of Súdrás from amongst those of the Súdrá class." By this Váchaspati is refuted, who says: "Súdrás are incompetent to affiliate a son, from their incapacity to perform the sacrament of the Homa, and prayers prescribed for adoption."

27. Since the [only] power of widows is fixed to be that of using property during their lives, it is established that they have not power to adopt a son. But it must not be affirmed, that it follows that in the same manner women also, whose husbands are living, are incompetent: on account of their incapacity to perform

(a) In Bengal she could adopt only with the express permission of the husband (*Jamunadasi* v. *Vamasundaridasi*, I. L. R., 1 Cal. 289 P.C.,) The same view obtains in Allahabad (*Tulsi Ram* v. *Behari Lal*, 12 All., 328 F.B). In Bombay a Hindu widow being heir to her husband can adopt a son in the absence of prohibition by her deceased husband (*Rukmabai* v. *Radhabai*, 5 Bom. H.C.R. 181). In Madras a Hindu widow though not authorised by her husband may yet adopt a son with the permission of her husband's sapindas (*Collector of Madura* v. *Muthu Ramalinga Setupati*, 12 M. I. A. 435).

the burnt sacrifice, prayers, and so forth. For by the reservation "unless with the assent of her husband" ability to perform the principal act [viz., adoption], being established, from their consequent power to perform what is subordinate [viz., those solemnities], the burnt sacrament, prayers, and so forth, might be inferred. Therefore, since by this passage ("of women and Súdrás without prayers") a dispensation with respect to prayers is established, the adoption [of the women in question] would be valid without prayers like their acceptance of any chattel.

28. Besides, this part of the text, "unless with the assent of her husband," is an exceptive exemption from the general prohibition, contained in the part preceding; "Let not a woman either give or accept a son"(1) and in it the assent of the husband is the cause. Therefore, the widow is incompetent [to adopt]; for her husband being dead, since his assent is impossible, the exemption, destitute of the cause, is without validity; and other means of deducing are wanting. This must be admitted by all disputants.

29. Nor could it be argued, that this being the case, her exclusion from heaven would not be obviated. For that, in the following text, is declared by Manu to be removed by devotion to pious austerity. "Like those Brahmacháríns, a virtuous wife ascends to heaven, though she have no child, if, after the decease of her lord, she devote herself to pious austerity."(2) Thus the whole is unexceptionable.

30. "By a man destitute of a son." From the singular number being here used, it follows that the same son must not be adopted by two or three persons.

31. But would not thus, the law as to the son given, and the rest, being 'Dvyámushyáyaṇas' (or sons of two fathers), be contradicted? Accordingly, there is this passage of law, in the Prayogapárijáta: "Sons given, purchased, and the rest, are sons of two fathers. Their marriage may not take place in either family as was the case of Sringa and Saisira."

32. It is not so: for the state as son of two fathers imports both a natural and an adoptive father; and the prohibition regards two adoptive fathers. Thus there is no contradiction.

33. The substitute is of eleven descriptions: the son of the wife, and the rest, according to a text of Manu which recites, "Sages declare these eleven sons, (the son of the wife and the rest,) as specified, to be substitutes for the real legitimate son; for the obsequies would fail (kriyálopát.)"(3)

34. Of these, those are substitutes by right even, who are related by containing portions of either of the husband and wife; and the text [of Manu] intends a restriction. Again, those who bear not such connection are substitutes in virtue of passages of law.

(1) Vasishṭha, xv. 5. (2) Manu, v. 160, and Vishṇu, xxv. 17.
(3) Manu, ix. 180.

35. For instance: the son of the wife, the son of an appointed daughter, the daughter appointed to be a son, the son of an unmarried daughter (kánína), the son of a twice-married woman, the son received with a pregnant bride, the son of hidden origin, are principal substitutes, as partaking partially of portions [of the pair], from their kindred, in some instances, to their mother only, and in others in a small degree, to both parents. The son given, the son bought, the son made, the son self-given (Dattátma), and the son rejected, are substitutes in virtue of express texts of law. Now, the term 'substitute' is applicable to both classes even, by reason of its frequent use in the same manner as in the passage, "He places bricks (srishṭi)" the term 'srishṭi' [intends bricks generally].

36. It has been said by Medhátithi.—"These cannot be substitutes: a substitute is supplied on defect of the means of completion of an act commenced.—Now a son is no such means, for he is the primary object of the act of the production of offspring: Hence the term 'putra' (son), applying even to the son of the wife, and other adoptive sons, the designating these substitutes is for the sake of enhancing the value of the son of the body (aurasa); for the expression 'substitute' as current, denotes a lesser degree of benefit. To the same extent, as the real son can confer much benefit, the others are unable."

37. This deserves examination; for the position to be proved being this, that the sons given and the rest are not substitutes; the cause assigned, viz., the not being the means of completing the act of the production of a son, does not apply to the persons affected by the point to be proved: since these, as they already exist, are not liable to be produced.

38. Again, in the precept enjoining the production of a son, the son being the object to be produced, is no means of completion. But this is the case in respect to that precept only, not any other precept.—For from passages of scripture such as, 'or he is absolved from debt who has issue, &c.," this precept resulting: 'Let him procure absolution from debt through a son,' it is established, that the son, as being the instrumental cause of such absolution, is a means of completion: and the instrumentality of the son is even expressly declared by Manu, in this and other passages: "By a son a man conquers worlds, &c." (v. § 13.)

39. If this be the case, then, there may be for the sake of attaining immortality, and the solar abode, a substitute for a grandson, and great-grandson—Be it so: we are in no-wise affected.

40. Nor does an identity of precept follow, from both having a common result: for, in the same precept, the two instrumental causes (connubial intercourse at due season, and a son), and their several effects (a son and redemption from debt) cannot be included: and were they, three contradictory things would become two.

41. Consequently, the son being the instrumental cause in an act, the object to result from which is absolution from debt, on his failure, the son given, and the rest may without inconsistency be substitutes, in the same manner, as [at a sacrifice] where the 'Soma' plant is wanting, the 'putika' is a substitute.

42. This even is made obvious by Manu [who says]: "For the obsequies would fail." Because the failure of these would ensue if, on default of a legitimate son, the affiliation of a substitute might not take place. Obsequies are funeral rites consisting in presenting oblations of food and water, and so forth. In the same manner by Atri also [it is said]: "For the sake of the funeral cake, water and solemn rites" (v. § 3). Thus the whole is unimpeachable.

43. "There is no substitute for mastership, a wife, a son, a country, time, fire, the divinity, an act, a word, &c." As for the exclusion of the substitute for a son, by this text of Satyáshádha, that [is propounded by the author], after having authorized to one, having no son, a substitute for the same (in such passages as that subjoined), for the sake of obviating, the recital of the benediction [therein alluded to]. "He recited, for offspring, that benedictory prayer called 'Jyotishmati.'" Accordingly, there is this passage of Sruti: "He to whom no son may have been born should recite for offspring, the prayer commencing 'Joytishmati.'"

44. So in the Sáma Veda, in the part treating of father and son, after having by such passages as "The father of such a one sacrifices, &c." authorized, to one destitute of a son, a substitute for the same: [the subsequent prohibition] is meant to avoid such particular passages; but not intended to exclude, in every case, a substitute for a son; for that would contradict the following and other passages of Smriti: "A substitute for a son must be adopted" (§ 3). "To be substitutes for the real legitimate son" (§ 33).

45. It is next considered whether this substitute for a son, who is ordained, is so, in virtue of the precept enjoining the production of a son, or that regarding the funeral obsequies. For reference has been made to both; for instance, with respect to the precept to produce a son, by the first part of Atri's text. "By a man destitute of a son only, a substitute for the same must always be adopted"(1)—and with respect to the precept regarding funeral obsequies, by the concluding part of the same text: "For the sake of the funeral cake, water and solemn rites."

46. Of these positions, the first is not correct: for there can be no substitute in virtue of the precept to produce a son; as the son, by reason of being the object to be produced, is no means of completion.

47. Neither is the second accurate; for a contradiction would be involved. The substitute for a son is ordained for one

(1) Not found.

having no male issue: but not funeral obsequies performed by such person: and exequial rites, the agent of which is a son, [are ordained]; but there is no precept executed by a son directing a substitute on his (the son's) account. Nor is there a substitute for an agent.

48. Or it also may be affirmed that the substitute is supplied, with respect to being an agent, in the performance of the act, but not in respect to enjoying the fruit; in the same manner as in the case of the death of any one of the seventeen priests engaged in a sacrifice (Satra), a substitute is supplied with respect to being an agent in the act: so also in the case in question.

49. This also is wrong; for the cases are not strictly analogous. In the instance of the sacrifice the substitute is for one by whom an act was commenced: But in the case proposed, since the act's commencement even (being completely non-existent) is impossible, how can there be a substitute? Nor is the commencement of an act, by a substitute, admitted by one versed in logic.

50. Or it may be next alleged that there is a precept regarding oblations of food, and so forth, performed only by one having no son at his own srâddha, taking place during his life. In virtue of this only, is a substitute [ordained]. This is likewise incorrect: for if [in this case] there might be the substitute for a son, the precept itself, regarding the srâddha to take place during the life of the individual, would be of no effect.—Besides, himself being the agent in the performance of the srâddha, taking place during his life; the substitute would be even for himself, not for the son: since the son [in this case] is not the agent.

51. Therefore, in virtue of the two precepts first mentioned, there can be no substitute for a son. Moreover, the assigning also as a reason, "For the sake of the funeral cake, water and solemn rites" (§ 3) would be inappropriate; for it would not apply to the person to be affected by the point to be proved. It has already been said that exequial rites performed by the man having no son are not suggested.

52. The question is thus solved: "By a son a man conquers worlds, &c." In virtue of the precept implied in this and other texts, and supported by confirmatory passages (such as "Heaven awaits not one destitute of a son"); on failure of the legitimate son, the son of the wife, and the rest, are ordained to be the eleven-fold substitutes; and in the precept alluded to, an act being required, to operate intermediately, in completing the state of heaven, and the son, severally, as the effect to be produced, and the efficient means: it is added "For the sake of the funeral cake, water and solemn rites."

53. The term 'always' (§ 3) signifies that in the present case, no definite period is required, as in "the barren woman, in the eighth year, is to be superseded."(2)

(1) Manu, ix. 180. (2) Manu, ix. 81.

54. The funeral cake] the 'sráddha'—Water, that is, the presenting water in the two united palms, and so forth. Solemn rites *i.e.*, rites in honour of the deceased, cremation and the like. These are the cause (hetu) :

55. The reason occasioning the adoption is the cause. This, from being used in the singular number, shows that these ceremonies collectively are the cause, and not individually; and consequently, the meaning is that there is not a distinct affiliation, severally, for each; but one adoption only on account of the whole : for on default of a son the failure of the oblation of food and other rites is the consequence.

56. Accordingly, Manu says: "Sages declare these to be substitutes; for the obsequies would fail (kriyálopát)." Here, this part, "for the obsequies would fail" is a reason subjoined on a negative hypothesis : "The meaning is,—because, if there were no substitute for a son the obsequies would fail."

57. Or, there may be this disjunction, [of the compound term 'kriyálopát;' kriyá + alopát],—would then be the fifth or ablative case, used after the rejection of the indeclinable past participle formed by the affix 'lyap :' The meaning is,—for the sake of preventing a failure.

58. "On failure of the son, let the wife be, &c.," although, by this and other passages, the capacity of the wife, and other [heirs] also to perform the obsequies is declared : still it must be unquestionably affirmed, that, from the authority of such passages as this ("Heaven awaits not one destitute of a son"), the mansions of the happy, attainable by obsequies performed by a son, are not acquired by such rites executed by the wife and the rest. For, otherwise, the wife and other heirs, of one destitute of male issue, being competent to perform rites, which would be equally effective, the specification of failure [of the son], would be unmeaning, as an alternative results from such equality.

59. Hence, for the acquisition of some particular heaven to be attained by obsequies performed by a son, the substitute for a son is indispensable. And it is said by Medhátithi, "Now, as for the assigning there the first rank to the legitimate son, that is not productive of any temporal effect, but on account of excessive spiritual benefit: to the same extent as the legitimate son can confer much benefit, the others are unable—and 'substitute,' as generally accepted, implies a diminution of benefit."

60. Kriyálopát.] The 'kriyá' or act here alluded to, is from "'kriyate,' what is done :—the precept [by which it is enjoined], 'offspring must be produced.' Let there be no omission (lopa), of this.—This precept is peremptory : in some manner, or another, it must be accomplished by the householder. Of the offspring alluded to, the real legitimate son is the first in rank; should such not be acquired, these descriptions of sons [that of the wife and the rest], must be resorted to."—This interpretation

by that author [Medhátithi] alone, must be looked into. Is it said [by him] that the precept directing the adoption of the son given, and the rest, is a substitute for that directing the procreation of a son; or, perhaps, that the son given, and the rest, are the substitutes for a legitimate son?

61. Of these the first is not correct: for the substitute of an act is forbidden in the passage, "of the divinity, fire, a word, an act, &c." Neither is the second accurate; since it would be at variance with preceding passages [of the same author] such as, "These [the wife's son, and the rest] cannot be substitutes, &c." (§ 36). For in this passage it is declared there can be no substitute for a son as a son, by reason of being the object to be produced, is no means of completion.

62. Therefore, from the term 'kriya' (in the expression 'kriyálopát'], the precept to produce a son cannot be inferred; but, on the contrary, funeral rites alone must be understood on account of unity of import with the text of Atri, which expresses: "For the sake of the funeral cake, water and solemn rites." It would be useless to enlarge.

63. 'Prayatnatas', *i.e.*, with effort, the affix 'tasil' of the fifth case is used to form this word for the sake of agreeing in construction with the preceding terms "yasmát tasmát" (with some one): and, consequently, the meaning is that by some one resource (or mode) whatsoever, a substitute for a son is to be affiliated.—And, although in that text, any resource in general is mentioned, still, since eleven descriptions of sons have been ordained, eleven resources only are recognized.

64. "Sons of many descriptions, who were made by ancient saints cannot now be adopted by men by reason of their deficiency of power, &c."(1) On account of this text of Brihaspati, and because of this passage, "There is no adoption, as sons, of those other than the son given, and the legitimate son, &c."; other sons are forbidden by Saunaka in the Kali or present age; amongst the sons, however, the son given, and the legitimate son only, are admitted.

65. The term "given" is inclusive, also, of the son made, (krítrima) on account of a text of Parásara, on the occasion of treating of the law of the Kali age, which states: "The son of the body (aurasa), and the son of the wife, also, the son given, the son made, &c."(2)

66. Nor is it to be argued from this that, in the Kali age, there may be the son of the wife [technically so called]: for such is forbidden by the mere prohibition against the appointment in that age, [of a wife to raise issue to her husband by another.]

67. Should it be contended that then an option would proceed, from the wife's son being ordained and forbidden, it is wrong, for many objections would be the consequence.

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(1) Brihaspati, xxiv. 14. (2) Not found.

68. Again, if it be asked, in what light, then, the mention of the son, of the wife, in this passage, [must be regarded] we reply, as an epithet of aurasa (the son of the body). Accordingly, Manu says: "Him whom a man has begotten on his own wedded wife, let him know to be the first in rank, as the son of his body, (aurasa)."(1)

SECTION II.

Who is to be adopted?

1. Of these two: the rules regarding the 'Dattaka,' or adopted son, are now propounded. The three points, on this subject, to be considered, are,—who is to be adopted? how qualified? and in what manner?

2. As to the first of these points, Saunaka has declared; "the adoption of a son by any Bráhmin, must be made from amongst 'sapiṇḍas' or kinsmen connected by an oblation of food; or, on failure of these, an 'asapiṇḍa' or one not so connected may be adopted: otherwise let him not adopt."

3. "From amongst 'sapiṇḍas'"—That is, from amongst such kinsmen, extending to the seventh degree inclusive: and the term being used in its general sense it follows—'from among such kinsmen belonging to the same or a different general family (gotra).'

4. Of these, with respect to the being of the same general family, this text of Vriddha Gautama, is an authority—"The sons given, purchased, and the rest, who are adopted, from those of lineage (gotratá) [to the adopter]. But the relation of sapiṇḍa is not included."

5. State of lineage (gotratá) [that is, the condition of offspring (santatitva); for a passage from the Káliká-puráṇa recites —"Sons given, and the rest, though sprung from the seed of another, yet being duly initiated [by the adopter], under his own family name, become sons [of the adoptive parent]"—and in the Trikándi or vocabulary, of Amara Simha, the terms 'santati,' and 'gotra,' are exhibited with others, as synonyms signifying 'race or lineage.'

6. Nor, by the term 'gotratá,' is connection by the same general family, declared: for the declaration would be unnecessary, as that connection is obvious from the affiliation taking place only from amongt those of the general family of the individual himself.

7. "But the relation of sapiṇḍa is not included"—By this, in the case of the affiliation of one not being a 'sapiṇḍa,' such connection, as extending to both the fifth and seventh degrees, is barred.

(1) Manu, ix. 166.

8. With respect to the affiliation of one belonging to a different gotra, the following passages, severally, from Manu, and Brihat Manu, are authorities. "A given son must never claim the family and estate of his natural father, &c."(1) "Sons given, purchased, and the rest, retain relation of sapiṇḍa to the natural father, as extending to the fifth and seventh degrees:—like this, their general family, [which is] also that of their adopter."

9. That which has been explained is the primary class: in case [the adoption] cannot be made from this, the author [Saunaka] propounds a subordinate class; "on failure of these, an 'asapiṇḍa,' &c." 'On failure of these,' that is, of the sapiṇḍas or kinsmen connected by an oblation of food, a person not so connected (asapiṇḍa), must be affiliated.

10. Those not sapiṇḍas are kinsmen beyond the seventh degree and persons not allied at all. And these also are of two descriptions: those belonging to the same and those belonging to a different gotra. For this also the passages before cited are authorities.

11. Of what has preceded, this is shortly the drift.—The 'sapiṇḍa' belonging to the same general family is the first [in rank]: on failure of him, such kinsman of a different general family.

12. Although the "sapiṇḍa" of a different family, and a person of the same family, but not a "sapiṇḍa," are both equal with respect to their severally wanting a quality possessed by the other: still, however, by reason of propinquity, the individual deriving his claim from the connection as "sapiṇḍa," is preferable to him claiming by family; and hence it is, that though of a different family, a "sapiṇḍa" even, from the family of the maternal grandfather, must be adopted.

13. In every case, on default of a "sapiṇḍa," one not related as such is to be adopted: of this description, the kinsman allied by a libation of water (sodaka), to the fourteenth degree, being of the same general family, is the nearest;—On failure of him, one not so allied, but of the same general family, to the twenty-first degree; and in default of such also, one not belonging to the same general family, and not related as a 'sapiṇḍa.'

14. Śákala has declared this: "Let a regenerate man, being destitute of male issue, adopt as a son, the offspring of a 'sapiṇḍa' kinsman: or next in order, the son of one of the same general family (sagotra): in default of such, let him bring up one born in a different general family."—By the expression 'sagotra,' those allied by a libation of water (sodaka), and belonging to the same general family, are included.—Now, in this text, the proximity [in order], of each successively, is particularly shewn.

15. Vasishṭha also propounds the same—"Should take an unremote kinsman or near relation of a kinsman, &c."(2)

(1) Manu, ix. 142. (2) Vasishṭha, xv. 6.

16. The construction of this passage is thus. He is an unremote kinsman, who is both a kinsman, and in a near degree;—meaning, a near 'sapiṇḍa.'—Now, propinquity is of two descriptions,—by belonging to the same general family, —and by the intervention of few degrees. Of those allied by propinquity, the 'sapiṇḍa' of the same general family, and removed by few degrees, is the principal: on default of him, a 'sapiṇḍa' of the same general family, though removed by many degrees; on failure of such, a sapiṇḍa belonging to a different general family: on default of this latter also" the near relation of a kinsman,"—meaning, of a 'sapiṇḍa' kinsman, the near relation or 'sapiṇḍa,'—being one allied to the individual himself by libations of water (sodaka), but not his 'sapiṇḍa.' Such is the import which is deduced.

17. Relationship also there alluded to is of two descriptions;—by belonging to the same general family,—and by the intervention of few degrees. The first in rank is the 'sapiṇḍa' kinsmen, of such kinsmen of the man himself, removed by few degrees, and belonging to the same general family, as that person, though not his own sapiṇḍa. On default of such, the 'sapiṇḍa' of his own 'sapiṇḍa' kinsmen, being of the same general family, though removed by many degrees.—One connected by a libation of water is intended.

18. If a 'sapiṇḍa' or 'sodaka' relative cannot be procured, one belonging to the same general family, to the twenty-first degree, must be adopted: should none such exist, a person of a different family, although not a sapiṇḍa, must be adopted; for the text of Saunaka says, "or, on failure of these, an 'asapiṇḍa':" and this is indicated by Vasishṭha [who says], "But if doubt arise, let him set apart like a Súdrá, one whose kindred are remote."

19. He whose kinsmen are distant is 'one whose kindred are remote:' the meaning is,—one not allied by an origin from the same stock, or by the relation of 'sapiṇḍa.' The doubt, alluded to in this passage of Vasishṭha, regards lineage, disposition, and so forth: it arises in the case, of one unconnected as a 'sapiṇḍa,' and not sprung from the same general family. This is also implied in the passage, "otherwise let him not adopt" (v. § 2).

20. Although none other than such as are connected as 'sapiṇḍas, and not so, can exist: still, since by the sequel of the text, ("of all, and the classes likewise, in their own classes only, not otherwise") those connected as sapindas, and not so, are qualified, as being of the same class; both sapindas, and those not such, who do not belong to the same class, are excluded [from being adopted]. For they might be inferred as a subordinate class, by the rule of logic, "What is not expressly denied is admitted."(a)

(a) This is a legal maxim of very large application in the construction of texts. The maxim is stated in other words as 'permission is presumed in the absence of prohibition'.

21. Accordingly, Saunaka forbids the participation in inheritance of one not of the same class, thus,—"or should one of a different class be taken as a son, in any instance, let him (the adopter) not make him a participator of a share; this is the doctrine of Saunaka."(1)

22. Hence, it is established that one of a different class should not be adopted as a son.

23. Accordingly, Manu: "He is called a son given, whom his father, or mother affectionately gives, as a son, being alike, &c."(2) [Alike] that is,—of the same class; for a text of the chief of the saints (Yájñavalkya) says: "This law is propounded by me in regard to sons equal by class."(3)

24. As for what has been said by Manu himself: "He is called a son bought, whom a man, for the sake of having issue, purchases of his father and mother: whether the child be like or unlike."(4) This must be interpreted, whether like, or unlike, in qualities, not in class.

25. "Alike not by class, but by qualities suitable to the family: accordingly, a Kshatriyá, or a person of any other inferior class, may be the son of a Bráhmin." As for this interpretation of Medhátithi, and one in the Kalpataru, "a Súdrá even is certainly a son, such is the meaning:"—these both must be rejected on account of their contradiction both to the passage from Yájñavalkya before cited, ("This law is propounded by me in regard to sons equal by class")—and the text of Saunaka which recites, "[in their own] classes only: not otherwise."

26. "A son self-given, and a son by a Súdrá, are the six kinsmen, but not heirs."(5)—The enumeration by Manu, in this passage, of the son by a Súdrá, as a substitute, must be explained, as meaning that one procreated by a Súdrá on a female slave, but not born in wedlock, inasmuch as he is not a principal son, is a substitute for the same. For a text of Yájñavalkya states "Even a son begotten by a Súdrá on a female slave may take a share by the father's choice. But if the father be dead the brothers should make him the partaker of the moiety of a share: and the one who has no brothers may inherit the whole property in default of daughter's sons."(6)

27. Hence, the explanation by Aparárka, of the term in question, is alone correct; "alike, being of the same class, &c." Yájñavalkya also.—"This law is propounded by me in regard to sons equal by class."

28. Now, amongst near sapiṇḍa kinsmen of the same general family, a brother's son alone must be affiliated; and this doctrine is recognized also by Vijñánesvara.

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(1) Not found
(2) Manu, ix. 174.
(3) Yájñavalkya, ii. 133.
(4) Manu, ix. 166.
(5) *Ibid*, ix. 160.
(6) Yájñavalkya, ii. 133 and 134.

29. By the position that 'a brother's son alone must be affiliated,' it is meant that the son of a whole brother alone must be affiliated. Manu declares this:—"If one, among brothers of the whole blood (ekajáta) be possessed of male issue (putraván), Manu pronounces that they all are fathers by means of that son."(1)

30. In this text, the state of brothers, as adoptive fathers, being propounded, their incapacity to be the objects of adoption follows.

31. Of the whole blood]. By this expression it appears that this condition of adoptive fathers alluded to, applies to those only begotten by the same father on the same mother, not to such as are born of a different father or mother.

32. Brothers.] From the masculine gender being used, it results that brothers, and sisters also, of the whole blood, are not reciprocally the adoptive parents of the son [of any one of them]: and this conclusion is confirmed by the mention of two terms [in that gender]. Vriddha Gautama declares the same: "In the three superior castes a sister's son is nowhere [mentioned as] a son."

33. The expression 'sister's son' is inclusive of the son of a brother also. Hence, this meaning is deduced that a brother's son must not be adopted by a sister; for brothers only are mentioned to be adoptive parents [in the text of Manu, § 29].

34. "'Brother' and 'son,' when occurring in combination, severally, with 'sister' and 'daughter,' are retained; [the other terms being omitted.]" Although, by this rule of grammar, the term 'brothers' may be a compound formed by the retention of one term and omission of another: and thence, the reciprocal affiliation, by a brother and sister, of a sister's and a brother's son, respectively, might be inferred: still those are 'ekajáta' whose játa or játi (kind) is the same: for these words with 'sámánya,' are cited in the dictionary as synonyms, signifying kind or sort; [therefore,] since by 'ekajáta, the epithet of 'brothers,' it is intimated that those [signified by that term,] are of the same kind, the affiliation, by brothers, who are male, of a brother's son, and by sisters, who are female, of a sister's son, would be established. The adoption of a brother's son by a sister, or a sister's son by a brother, could not take place on account of the difference of their kind, in being male and female [respectively].

35. But the single expression 'ekajáta,' once uttered, cannot bear two meanings, namely, 'being of the whole blood,' and 'being of the same kind': for this maxim in logic would be contradicted; "A term once uttered conveys a single meaning."—Should this objection be made it is wrong: for the word 'samsrishta,' occurring in the following passage, has been explained by Vijñánesvara, as signifying a whole brother, and re-united as a

(1) Manu, ix. 182.

coparcener: "..., though not re-united; but one united (samsrishṭa) [by blood,] though not by coparcenary, may obtain the property, and not [exclusively] the son of a different mother."(1) So even in the present case likewise. Thus, there is no inconsistency. Enough has been said.

36. The plural number is inclusive also of the dual: for two are contained in many: and the being son of two fathers is shewn in the following text: "If he be son of two fathers let him designate both in each distinct oblation of food."(2)

37. "If one"—that is, 'if one even'] By this, where two or more are the fathers, the author implies *à fortiori*, the more easy adoption of a son, by the others destitute of the same: he does not bar the affiliation of the only son of a single brother: on account of the cogency of the specification of the term 'one,'—and the singular number in the expression 'that son.' The derivative adjective 'putravân' (possessed of male issue) applies to him, of whom there are, one, two, or more sons.

38. And hence, from the sanction of the gift of an only son even in the present case, there is no room for the application of the prohibition ("Let no man give or accept an only son, &c.") For, since, as propounded in the sequel of this text, assigning the reason ("For he is [destined] to continue the line of his ancestors,"(3) the continuation of the line of his ancestors (the father, and the rest), is completed by means of a son, although common to two brothers: it is established that the prohibition in question refers to persons other than brothers.

39. Besides, as gift consists in the creation of another's property after the previous extinction of one's own; and this is forbidden by the text quoted;—and since, in the case proposed, there is no extinction of property by making the son of one brother common to both;—the sense of the word "gift", [as applied thereto,] like the gift of a daughter in marriage, is figurative.

40. Since the word 'putra,' [in 'putravân,' 'possessed of male issue'] in its sense of the real legitimate son is primary, it is established that those designated by that term are sons of that description only: and, consequently, it follows that there is no adoption [by other brothers] of the substitute for the real son, made by a brother.

41. Since by the verb 'be' [in the present tense,] the actual existence of the condition of possessing male issue is declared; [the author] excludes such condition, as past and future: and hence, the benefit mentioned in such texts, as ("should the father see the face of a living son, &c.") does not accrue to one brother by the means of the deceased son of another:—neither, in the expectation of an unborn son [of a brother], must the adoption of another, be omitted.

(1) Yájñavalkya, ii, 139. (2) Nárada, xiii. 23.
(3) Vasishṭha, xv. 3.

42. Since the brothers only, destitute of male issue, would be designated by the pronoun, 'they'; 'all' is added, with a view to obviate [any inference], as to the want of relation of the natural father to his own son.

43. As 'they' is a compound, formed by the retention of one term, and omission of others, being resolvable into the phrase "he and they (dual and plural)"; at the desire of one, two, or more [brothers], for male issue, the affiliation of a brother's son takes place.

44. 'By means of that'.] By him even, by whom the natural parent becomes the father of male issue, do all the brothers also become so.—'Son'] ; from the use of the singular number, the relation as son, of one even, to many, being declared, the prohibition, contained in the text, "Let no man give or accept an only son" is not applicable here: as, indeed, has been already declared. (§ 38).

45. And accordingly, in the Káliká-puráṇa, an indication of Vetála and Bhairava, sons of Sankara, becoming both fathers of male issue, by means of the same son, is thus found: "The sages said: 'There is no salvation for one destitute of male issue. This is recognized in the world and the Vedas. Vetála and Bhairava formerly went to a mountain to perform devotion. Previous to that, they were unmarried, and sons of them are not mentioned as having been born or not born. If sons were born, O excellent of the regenerate, we much wish to hear the particulars concerning them.' Márkaṇḍeya replied: 'Salvation is not for one destitute of male issue, both in the next world and in this: O excellent saints, those who are fathers of male issue, by means of their own sons, and those of brothers, attain heaven. Having in this world attained great perfection, when Vetála and Bhairava reached the abode of the great deity, they were happy on the hill Kailása. Then, oh! twice-born men, Nandi, by the order of Siva, as one consoling, addressed them in private in the following true and instructive speech: he said 'Do you sons of Sankara, destitute of male issue, exert yourselves in the production of a son. By one to whom a son is born, everywhere salvation is easily attained.' Márkaṇḍeya continued:—'Having heard these words of Nandi, they became elated in their hearts and said to him: 'We will make one [son] only.' Accordingly Bhairava, at some time, cohabited with Urvasi, a celestial nymph, and procreated on her a son named Suvesa. Vetála also affiliated him as his son: and in consequence, by means of this son, both attained heavenly salvation."

46. But must not this relation of one as son to many [brothers] be either produced at once, or in gradation? Not the first: for there is no precept enjoining that they should receive in adoption at once. Nor is the other supposition accurate: for on a boy precluded by a previous initiation, another initiation of the same description as the first cannot be performed.

47. Should this be alleged it is wrong: for analogous to the case exemplified in the passage ("seventeen are inferior and twenty-four superior sacrifices, &c."), the words 'they,' and 'all,' being the abridged form of the conjunctive compound: the association of the adopting brothers is meant to be declared thereby: hence the gift even [of a son] to several brothers associated is valid. In the same manner, as at the religious gift denominated 'tulápurusha,' the united officiating priests are the objects to whom it is made, and the receivers.

48. Váchaspati Misra declares the same, thus: "Since the plural number is used in 'officiating priests' in this passage, ('Having thus prayed to the gods, let him give the officiating priests ornaments of gold,') the whole of them conjointly even are the object to whom the gift is made: and hence, after having placed his spiritual preceptor's hand above all, and arranged in order under it, those of the officiating priests who read the Rig-veda, &c., the ornaments are to be given."

49. Nor is even the being son to many [brothers] at the same time anomalous: for analogous to Draupadi's being the wife [of several brothers] by simultaneous acceptance, that relation of one, as son to many, though somewhat differing, is acknowledged; like the recognised state of the 'Dvyámushyáyaná' or son of two fathers.

50. "Fathers of male issue (putrinah)]. "Of whom there is a son."—By the verb 'is' (signifying existence) in this phrase, (into which this derivative adjective resolves,) since existence is declared, and existence not applying to one who has not been produced, an act of the adoptive fathers is implied.

51. And accordingly Atri: "By a man destitute of a son only must a substitute for the same be made, &c."—Vasishtha also: "A person being about to adopt a son should take an unremote kinsman, or the near relation of a kinsman, having convened his kindred, and announced his intention to the king, and having offered a burnt offering, with recitation of the holy words, in the middle of his dwelling."(1) Likewise Saunaka: "Having advanced before the giver, let him thus cause to be asked, 'Give this son,' &c."(a)

52. "Cause to be asked."] Here, by the causal form of the verb being used, it is meant:—'Let him ask, through a Bráhmin employed for that purpose.'

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(1) Vasishtha, xv. 6.

(a) Among Súdrás no ceremony is required to validate an adoption, (*Indramuni Chowdrani* v. *Behari Lal Mullick*, I. L. R., 5 Cal. 770), nor among the Kshatriyás (*Chandramala* v. *Muktamala*, I. L. R., 6 Mad. 20); nor among Jains (*Lukmichand* v. *Gatt Bai*, I. L. R., 8 All. 319). In Bengal Dattahoma has been held to be necessary to constitute a valid adoption among the Bráhmins (*Bhairab Nath Sye* v. *Mahes Chundra Bhanduri*, 4 B. L. R., 162). The Madras High Court held the same view in *Venkata* v. *Subbadra*, I. L. R., 7 Mad. 548. But in *Govindaiyer* v. *Dorasami*, I. L. R., 11 Mad. 5, the Madras High Court held that among Bráhmins where the adoptee and the adopted were of the same gotra, Dattahoma is not necessary to validate the adoption.

53. And consequently, the position that the son of a brother, though unadopted, bears filial relation to his paternal uncle, on account of this text of Brihat Parásara ("Let the nephew of a paternal uncle, destitute of male issue, be his son: he only should perform his obsequies, the srâddha, and offer oblations of food, and libations of water,")(1) is refuted. For without an act of the adoptive parent filiation, as his son, is not accomplished.

54. It must not be argued that in the cases of the son of hidden origin and the son self-given, there is no act of an agent, [as adopter]; because, in these passages,—("One secretly born in the house is considered a son of hidden origin"—"Self-given, meaning, given by himself") no such act is mentioned. For it is inferred, as otherwise, the consecution of an effect to an act would not be attained.

55. Therefore, the texts of Manu, and Brihat Parásara (§§ 29 and 53) are not pertinent, to the extent of their verbal import; for thirteen descriptions of sons would be the consequence.

56. Nor would thus, what was intended result: for the enumeration of twelve, in this text, would be contradicted: "Of the twelve sons of men, whom Manu, sprung from the Self-existent, has named, six are kinsmen and heirs, and six not heirs, but kinsmen."(2)

57. But may not this contradiction of number be admitted on account of the passages below cited? Firstly, a different text of law: "The legitimate son, the appointed daughter, the son begotten on another's wife, the son of the wife, the son of an appointed daughter, the son of a twice-married woman, the damsel's son, the son received with a pregnant bride, the son of hidden origin, the son given, the son purchased, the son self-given, the son made, the deserted son, and the one born on a woman of unknown caste,—are the fifteen sons of a man."(3) Secondly, a text of Brihaspati: "Of the thirteen sons, enumerated in their order by Manu, the legitimate son and appointed daughter are the cause of lineage."(4) Thirdly, a text [of Manu]: "Sages declare these eleven sons, (the son of the wife, and the rest,) as specified, to be substitutes for the real legitimate son, for the obsequies would fail."(5) And lastly, a text also of Manu, which declares: "The son of the body and the son of the wife may succeed to the paternal estate: but the ten other sons can only succeed in order to their share of the inheritance."(6)

58. Should it be thus argued by an opponent, we reply,—True. It is established that there is no contradiction of the number twelve: for the several enumerations in each authority are consistent; since particular sons are, in some, implied, and in others, expressed.

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(1) Not found.
(2) Manu, ix. 158.
(3) Anonymous.
(4) Brihaspati, xxv. 33.
(5) Manu, ix. 180.
(6) *Ibid*, ix. 165.

59. And moreover, the assigning, in the following text, the fifth place, in the order of succession to the estate of one who died without male issue, would be contradicted: "The wife, and the daughters also: both parents, brothers likewise, and their sons."(1)

60. The meaning here is this. If the brother's son, though unadopted, bear filial relation [to his uncle], the enumerating the brother's son, on account of his wanting such relation, in the fifth place in the order of succession to one dying without male issue, would be contradicted. The same also must be understood in respect to the right in gradation to perform the obsequies, as declared in this and other texts. "The son, the son of a son, the son of a grandson: like these, the offspring of a brother, or that of a sapiṇḍa also, are born, oh king! capable of performing obsequies."(2)

61. But is it not deducing a false conclusion to argue a want of filial relation from not performing the obsequies and not succeeding to the estate; for the son of an unmarried daughter, and the rest, notwithstanding their filiation, are shown by Vishṇu, in this text, to be incompetent to perform obsequies or succeed to the estate. "Exceptionable sons, as the son of an unmarried daughter, a son of concealed origin, one received with a pregnant bride, and a son of a twice-married woman, share neither the funeral oblation, nor the estate."(3) So also, notwithstanding participation in the obsequies and estate may be wanting, the filial relation of the brother's son, though unadopted, may be admitted without objection.

62. Should it be thus objected: it is erroneous. Participation in the obsequies and estate has been declared to be the result of filial relation, in this passage ("Among these, the next in order is heir, and presents the funeral oblations, on failure of the preceding")(4); for, otherwise, like the impotent person and the rest, one who merely bore the semblance of being a son would be of no use; and in this text, ("By a man destitute of a son only must the substitute for the same always be adopted, &c."), an imperative mode of expression being used, the filial relation of one unadopted, cannot exist.

63. Nor must it be affirmed that the injunction in question regards those other than the brother's son: for there is no proof of such partial applicability and, on the other hand, it would be at variance with the instance of the adoption by Vetála of the son of [his brother] Bhairava, contained in the portion [of the extract from the Káliká-puráṇa, before quoted], commencing, "We will make one son only," and ending "Vetála also affiliated him as his son."

64. Moreover, in the case where, of ten whole brothers, five have each ten sons, and five are wholly destitute of male issue, it would follow that the five brothers destitute of male issue would

(1) Yájñavalkya, ii. 136.
(2) II. Cole. Dig., 624, dxiv.
(3) Not found.
(4) Yájñavalkya, ii. 132.

have each fifty sons; and it would also result that the fifty sons would severally have ten fathers: thus, there would be many absurd positions.

65. Nor would an intended consequence thus result: for in the passage, ("a substitute for a son must be adopted") unity, ascribed to the object to be adopted, is of definite import: and the singular number, used in the following passage to express severally both the male issue and the father of the same, would be contradicted. "If one among brothers of the whole blood be possessed of male issue, Manu pronounces that they all are fathers by means of that son."(1)

66. Neither must it be alleged that because the plurality of brother's sons is mentioned in this passage, ("those who are fathers of male issue, by means of their own sons, and those of brothers, are completely saved"), many brother's sons, even though unadopted, may be sons of one person: for from occurring in respectful modes of expression, in which by popular acceptation the plural number is used, it has an indefinite import: also, the injunctive precept proposed, being accomplished in our opinion by means of one only, the propounding many would be superfluous and repugnant to Sastras.

67. Hence it is a settled point, that amongst near "sapiṇḍas," kinsmen of the same general family, a brother's son only must be affiliated, and therefore, by being adopted, are first in participating in the estate and funeral oblations: but not being adopted, they hold their respective places.

68. The text, too, of Vishṇu, (§ 1) refers to where any son prior in the order of enumeration may exist. Thus there is no contradiction whatever.

69. But, this being the case, the filial relation of one unadopted, declared in the following text also, would not subsist. "If, among all the wives of the same husband, one bring forth a male child, Manu has declared them all, by means of that child, to be mothers of male issue."(2) And this would not be an intended consequence; for it would be contrary to custom and at variance with the appellation of mother, occasioned merely by being the wife of the father, as expressed in the passage: "The wives of the father are all mothers."

70. Should it thus be objected, it is wrong: for the son of a rival wife, originating directly from portions of the husband, may, though unadopted, bear the relation of son, and the text [of Manu] intends a restriction, as has already been declared. But since the brother's son is not connected by containing portions of either the husband or wife even, he does not, if unadopted, bear filial relation.

71. "If there are several brothers, the sons of one man by the same mother, on a son being born to one even of them, all of

(1) Manu, ix 182. (2) Manu, ix. 183.

them are declared to be fathers of male issue. The same rule is also ordained in respect to many wives of the same person: if one brings forth a son, he is the presenter of the funeral cake to the whole."(1) As for the application by analogy of the rule regarding the brother's son to that of the rival wife, declared by Brihaspati in this text, that is propounded as meaning, [the son of the rival wife] to be subsidiary son, not as intending his affiliation: for his filial relation [to his step-mother] is established from his proceeding from portions of her husband. Also, she being a substitute, being established, from proceeding partially from portions [of the pair]; the text [of Manu] intends a restriction, as already has been declared.

72. This has been made clear by Devasvámí, in this text: "In both, even, [it is meant, that,] another substitute must not be adopted."—And this text is thus interpreted in the Chandriká—"'In both, even'—in the two texts commencing, (If there are several brothers, the sons of one man, &c.) [it is meant that,] the son of a brother, and that of a rival wife, being any how capable of being substitutes, another must not be adopted as a substitute."

73. Vijñánesvara also thus explains the text of Manu (§ 29): "[This text] is intended to forbid the adoption of others if a brother's son can possibly be adopted: it is not intended to declare him son of his uncle: for that is inconsistent with the subsequent text: "Brothers likewise, and their sons, &c., &c."

74. If no brother's son exist, another even, being the nearest relative, according to the mode mentioned [must be adopted]. Conformably Saunaka [continues]: "Of Kshatriyás, in their own class positively: and even in the general family, following the same primitive spiritual guide (Guru): of Vaisyás, from amongst those of the Vaisyá class (Vaisyá-játeshu); of Súdrás, from amongst those of the Súdrá class. Of all the classes likewise, [in their own] classes only: and not otherwise. But a daughter's son and a sister's son are affiliated by Súdrás.(a) For the three superior classes a sister's son is nowhere [mentioned as] a son."

75. "In their own class."] in the Kshatriyá class. Notwithstanding 'class" (jati), being used in its general sense, propinquity as before, here likewise constitutes a restrictive condition; on

(1) Brihaspati, xxv. 99 and 100.

(a) The adoption of a daughter's son by one of the three regenerate classes is a point on which there is a conflict of authority. The prohibition of such an adoption rests on this passage of Saunaka in his "Putrasangrahavidhi". But Prof. Jolly at p. 162 of his Tagore Law Lectures says that the passage is not to be found in the Southern version of the work. Some ascribe the text to Nárada but it is not found in Nárada Smriti either. The Dattaka-Mimámsá and other works that follow it prohibit the adoption. The Bombay High Court in *Bhagirathi Bai* v. *Radha Bai*, I. L. R., 3 Bom. 298, has decided against the adoption, in spite of the Mayúkha. The Madras High Court, however, in *Vaidyanatha* v. *Appu*, I. L. R., 9 Mad. 44, have ruled in favor of the adoption on the strength of the practice obtaining in Southern India. The adoption of a sister's son stands on the same footing with that of the daughter's son and it has been held valid in Madras and invalid in Allahabad (*Parbati* v. *Sunder*, I. L. R., 8 All. 1).

account of the text of Vasishṭha: "A person being about to adopt a son, should take an unremote kinsman, &c."(1)

76. On default of a sapiṇḍa kinsman, "and even in the general family, following the same primitive spiritual guide."—Since there are no distinct and peculiar general families of the [primeval] Kshatriyás; the primitive spiritual guide is mentioned.

77. Accordingly, an account of his more remote connection, on failure of the "sapiṇḍa" kinsman, one belonging to the same general family is ordained. In respect to him also, the clause "in their own class, &c.," is likewise applicable; on account of the conclusion of the passage "of all, &c." And hence a near or distant relation of a different class is precluded.

78. 'Vaisyá-játeshu,] this must be rendered,—from amongst those of the Vaisyá class,—as if, 'játishu' had been used: for 'jata' or 'játi' of which the words are several inflexions, are recited in the Trikándi, as synonyms signifying, 'class or sort.'

79. Here also, although the specification is general, propinquity, as before, constitutes a restrictive rule. The clause too, ("and even in the general family, following the same primitive spiritual guide,") is here likewise understood; on account of the text, commencing "[He specifies] the general families of Kshatriyás and Vaisyás, as distinguished by following the same primitive spiritual guide: and because the passage, the initial words of which are 'who are adopted from those of his own general family, &c., &c.,'" is common to the three classes. It is equally the case in this instance also, that, on default of a 'sapiṇḍa' kinsman, one of the general family, following the same primitive spiritual guide, is to be adopted.

80. 'From amongst those of the Súdrá class'. Here also propinquity as before, [constitutes a restriction]; and the clause, ("and even in general family following the same primitive spiritual guide,") does not here apply: since [amongst Súdrás], a general family, distinguished by following the same primitive spiritual guide, is not ordained. Therefore it follows that the Súdrá class, in general, [is the order from which the adoption is to be made].

81. The same is declared in the Bráhma-puráṇa.—"In fact, for Súdrás gaining their livelihood by servitude, living on another's' bread, whose bodies depend on another, there is not a son, from any order whatever, [but their own class]: because a slave only is produced from a male slave and a female slave."(2)

82. On account of the superiority of those of the three first castes, and those born in their direct order and of the inferiority, of those born in the inverse order, a son cannot be adopted from any order whatever. A Súdrá only, therefore, must be affiliated; for a slave is produced from slave parents.

(1) Vasishṭha, xv. 6.

(2) II. Cole. Dig., 414, ccxcvii.

83. But the three rules regarding the 'Kshatriyás' and the rest, (§ 74) should not have been laid down; because their import is obtained from the passage preceding (v § 2): and even if laid down, there is tautology in the part commencing "of all, &c."

84. This, if objected, is wrong; because by the terms 'Kshatriyá' and the rest, the inclusion of the Múrdhávasikta and other mixed classes regulated by the same rules as the Kshatriyá and the rest, is meant: for a text of Sankha states:—"One procreated on a female Kshatriyá by a Bráhmin is a Kshatriyá even: on a Vaisyá woman, by a Kshatriyá, is a Vaisyá even: by a Vaisyá on a female Súdrá, is even a Súdrá."(1)

85. 'In their own class.' This is to shew that, though the same rules apply to the 'Múrdhávasikta' and other mixed classes, as to the Kshatriyá and the rest; still those do not become sons to a Kshatriyá, and the rest, on account of the indication of direct order, in this text. "Three wives in the direct order of the classes, &c., &c."(2)

86. Nor is there any tautology in this sentence, "of all, &c.:" for this part of the text: "of all, &c.," by reciting a restriction, as to their own classes, in respect to the classes and those born in the direct order of the same, is pertinent, in indicating that that does not apply to those born in the inverse order.

87. The expression 'of all' implies in fact this. From the cogency in the specification of the word 'classes,' the restriction to their own classes, would apply to the classes only: not to those born in their direct order. To include these the word 'all' is used. Now, they are included, because they are regulated by the same rules as the classes. Nor is this term an epithet of classes; for the conjunction 'and' would be insignificant.

88. And, therefore, the restriction is,—'of the classes, and those born in the direct order of the same, in [their own] classes only.' 'Not otherwise'—meaning—not amongst others, born in the inverse order of the classes.

89. But why should not this part, [commencing 'of all, &c.'] be considered as an exception to the rule as to propinquity, inferred from the preceding passage [in § 2]? Should it be replied, because it would be repugnant to the text of Vasishtha ("a person being about to adopt, &c."): the argument is wrong; for the result deduced from that text is, that it is identical in its import with the passage [in question,] regarding Bráhmins.

90. Such objection, if made, is inaccurate: for were the passage in question such exception, the rule, founded on ancient practice which makes propinquity as recognized by popular acceptation and in holy writ a condition, would be contradicted: no advantage would result: it would be repugnant to the context: and lastly, were an exception, as to propinquity in general, meant even by this

(1) Not found. (2) Vasishtha, i. 24.

passage, the exception as to particular relationship, conveyed in this part of the text ('But a daughter's son, and a sister's son, &c.'), would be inconsistent. Therefore, the interpretation given is the only useful one.

91. This part of the text ("but a daughter's son, &c."), propounds an exception, as to those of the three first classes, with respect to the daughter's son, and sister's son, inferred from the mention of propinquity in general.

92. Since, (the particle '*but*,' having an exclusive import,) a restriction 'by Súdrás only,' is conveyed; those of the three first classes are excluded. On this point the author subjoins a reason: "For the three superior classes, &c., &c."

93. Since the filial relation of a sister's son to one of the three first classes is not exhibited in any authority whatever, the passage is relative only to Súdrás. This is the meaning of the whole.

94. The expression, 'a sister's son' is of indefinite import, in the [part subjoined as a] reason; for [otherwise] it would follow that it were therein an unmeaning term: or were it of definite import, one portion [of the preceding sentence, viz., 'A daughter's son,'] would be void of sense.

95. The daughter's son, and that of the sister, refer to the Súdrá class, for in no other authority do they relate to those of the three first castes; an argument, the same as that used in the question, as to drinking spirits, and so forth. Hence, it is not accurate that these two refer to those of the three first castes.

96. Next it may be alleged, that both passages by being construed in a literal manner only, are demonstrative of their several subjects, but not so by being construed from inference. Consequently, it is the sister's son alone, that does not refer to the three classes: not the daughter's son.

97. This is also wrong: for a splitting of the text would result: and an option to those of the three first classes, in respect to the daughter's son, follows: since by being an unremote kinsman, he would be inferred [as eligible] and interdicted [as such] by the restriction to Súdrás only.

98. Or thus: By the restriction to Súdrás only, a prohibition of the daughter's son, in respect to those of the three first classes, would be established. And by the restriction that a sister's son only may not be [adopted] by those of the three first classes, a sanction of the daughter's son would be obtained. Thus there would be an option.

99. Besides if [the two passages in question] are to be construed with reference merely to their verbal import in the first passage, there would be either a restriction [as to the object of adoption], or one in respect to the agent (parisankhya). In what does the one, and in what the other consist? 'By Súdrás, a daughter's son and a sister's son only [may be adopted]'.—This is a restriction

[as to the object required], because [otherwise], the daughter's son, and the other, would be inferrible from one portion [of the general text],—and every relative commencing with the brother's son from another. 'By Súdrás only a daughter's son, and a sister's son [may be adopted].' This is a restriction in respect to the agent; [which would be required], as the daughter's son and the other might be inferred [as eligible], to the four classes collectively.

100. If restriction, as to the object of adoption, be meant, then there would be a contravention of the whole law ordaining the brother's son and the rest, [as eligible for adoption]: the word 'class' in this passage ("of all, and the classes likewise in [their own] classes only: and not otherwise") as signifying the daughter's son and the sister's son, would be narrowed in its import: and it would follow, where no daughter's son, or sister's son existed, the affiliation of a son could not take place.

101. But supposing a restriction in respect to those who may be the agents, meant; then, by the mere restriction to Súdrás only, the interdiction of the sons in question, to the three first classes being conclusively established, it would follow that the passage commencing ("for the three superior classes, &c."), as again prohibiting the same, were unmeaning.

102. Therefore, by a construction deduced from inference only, is the interpretation of the two passages correct. And moreover, a verbal construction founded on revealed law, is more vexatious, than a construction deduced by the help of inference, and grounded on reasoning: and revealed law, being taken [as the basis of the construction], two revelations must be assumed. Now ratiocination being the ground-work, this would not be the case. Therefore, the apparent reason presenting itself is the demonstrative means.

103. Although there is another reading.—"The daughter's son, and the sister's son, are declared to be sons of Súdrás": still, [both] are identical in their import, since the passage, commencing,—"For the three superior classes, &c."—is introduced to manifest that a restriction even is intended for obviating a doubt, whether, "of Súdrás only,"—or "of Súdrás also,"—were meant.

104. Now, that a restriction is meant, thus [appears]. Were there no restriction in respect to the act of affiliation, the object of which is the daughter's son and sister's son, all the four classes might be inferred as the agents therein. [But] from the consequent restriction to Súdrás, it is established that 'of Súdrás only' is meant.

105. And accordingly, the term 'sister's son' is inclusive even of the daughter's son also; for otherwise the restriction, that the daughter's son, and sister's son, refer to Súdrás would not be attained: or if attained, an option as to the daughter's son, in respect to those of the three first classes would result; as has been already noticed.

106. If this is the case, then, let the non-relation merely of the sister's son to those of the three first classes be proved by the daughter's son and sister's son, referring to Súdrás: should this be alleged, it would be wrong. For as such position would be established by this reason alone,—'from referring to Súdrás,'—the mentioning the daughter's son, and sister's son, would be unmeaning: and if a loose mode of expression must be assumed, the use of the term 'sister's son' only, without specific meaning, is less vexatious than the use of both terms, in an indefinite import. Consequently, that only which has been propounded is accurate.

107. Sákala has already laid down the above points: "Let one of a regenerate class destitute of male issue, on that account, adopt as a son, the offspring of a sapiṇḍa relation particularly: or also next to him, one born in the same general family: if such exist not, let him adopt one born in another family: except a daughter's son, a sister's son and the son of the mother's sister."

108. By this it is clearly established, that the expression 'sister's son' [in the last sentence of Saunaka's text, § 74], is illustrative of the daughter's son, and mother's sister's son, and this is proper, for prohibited connection is common to all three. To enlarge would be useless.

SECTION III.

Rule, should one different by class be illegally adopted.

1. It has been declared that one different by class must not be adopted: should this rule be transgressed what would be the result? In reply to this question, Saunaka says: "If one of a different class, should, however, in any instance, have been adopted as a son, he should not make him the participator of a share. This is the doctrine of Saunaka."

2. The meaning is:—should one be adopted, according to form even, whose class is different, being superior, or inferior, in respect to the adopter.

3. Exclusion from participation in the whole estate is implied from the cogency of the term 'share'; [which intends,] 'a share of the estate': and on account of a text of Kátyáyana, which says,—"But if they be of a different class they are entitled to food and raiment only,"(1) and a portion from Yájñavalkya, commencing, "Amongst these, the next in order is heir, and presents funeral oblations, &c.," and ending "this law is propounded by me in regard to sons equal by class."(2)

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(1) II. Cole. Dig., 348, ccxviii. (2) Yájñavalkya, ii. 133.

SECTION IV.

The qualification of the person to be adopted.—The gift of a son, under what circumstances and by whom proper.—The son of a twice-married woman, and slave's son specially referred to.

1. Next, in reply to the question, as to the qualification of the person to be affiliated, Saunaka declares: "By no man, having an only son (eka-putra), is the gift of a son to be ever made. By a man having several sons (bahu-putra), such gift is to be made at any inconvenience."

2. He, who has one son only, is 'eka-putra,' or one having an only son: by such a one the gift of that son must not be made: for a text of Vasishtha declares, "an only son, let no man give, &c."(a)

3. Since the word 'gift' means the establishing of another's property after the previous extinction of one's own: and another's property cannot be established without his acceptance: the author implies this also. Therefore, a prohibition against acceptance likewise is established by that very text. Accordingly, Vasishtha: "An only son, let no man give or accept, &c., &c."

4. To this he subjoins a reason, "For he is [destined] to continue the line of his ancestors." His being intended for lineage, being thus ordained, in the gift of an only son, the evil consequence of extinction of lineage is implied. Now, this is incurred by both the giver and adopter also. For the [reason in question], is subjoined, after both [verbs: viz. 'give' and 'accept'].

5. As for another text of Sruti,—"In instruction, the father is absolute over a son and sons' wives: but not so with respect to the son, in sale and gift," and the text of the Holy Saint: "Except a wife and a son, other things may be given:"—these texts regard the case of an only son.

6. 'Ever'] in a time of calamity: accordingly, Nárada says: "A deposit, a son, and a wife, the whole estate of a man, who has issue living; the sages have declared unalienable, even by a man oppressed by grievous calamities: although the property be solely that of the man himself."(1) This text, also, regards an only son; for it is declaratory of the same import as the texts of Saunaka and Vasishtha.

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(1) Nárada, iv. 4 and 5.

(a) The adoption of an only son has been held invalid in Bengal (*Manickchunder Datta* v. *Hughubati Dasi*, I. L. R., 3 Cal. 443). The Bombay High Court has taken the same view (*Vaman Raghubati Bava* v. *Krishnaji Kashi Rag Bava*, I. L. R., 14 Bom. 249). The adoption has been upheld in Madras and Allahabad (*Narainaswami* v. *Kuppuswami*, I. L. R., 11 Mad. 43; *Beni Persad* v. *Hardai Bibi*, I. L. R., 14 All. 67). See Sarkar (pp. 86 and 87 of his "Hindu Law"), Mandlik (pp. 497—500 of his "Hindu Law") and Sarvadhikari (pp. 532-534.)

The adoption of an eldest son would seem to stand on the same footing as that of an only son; but it has been upheld in Bengal and Bombay. (*Janaki* v. *Gopal*, I. L. R., 2 Cal. 365; *Jamuna Bai* v. *Rai Chand*, I. L. R., 7 Bom. 225).

7. Next, the author replies to the question,—By whom is a son to be given? 'By one having several sons.' He who has several sons is 'bahu-putra,' or one having several sons.'

8. "By no man having an only son." From this prohibition, the gift by one having two sons, being inferrable: this part of the text ("By one having several sons, &c.") is subjoined, to prohibit the same, by one having two sons also. For the speech of Sántanu to Bhíshma states: "He who has only one son is considered by me as one destitute of male issue, oh! descendant of Kuru. One who has only one eye is as one destitute of both: should his only eye be lost he is absolutely blind."

9. "By a man having several sons." Since the masculine gender is here used, the gift of a son by a woman is prohibited. Accordingly, Vasishṭha says: "Let not a woman either give or accept a son;"(1)—and [her] independence is not ordained.

10. With the husband's assent a woman also is competent. Accordingly, Vasishṭha adds: "unless with the assent of her husband."

11. "Whom his mother or his father gives (dadyát)"(2)—"his mother or father give (dadyátám)."(3) As for what is contained in these passages, as intimating the equality of the father and mother, that is merely with reference to the assent of the husband.

12. It must not be argued that thus the gift of her son by a widow, though during a season of calamity, could not take place on account of the impossibility of the assent of her husband; analogous [to her incapacity] to adopt. For by referring to the text of Manu such gift may be inferred as legal, and the singular number, indicating independence of another, is used.

13. The husband, singly even and independent of his wife, is comptent to give a son: for in the two passages cited (in § 11) the father is mentioned singly and unassociated with the mother, and there is this reason of Baudháyana found: "From the predominance of the virile seed, sons are regarded even as not produced of the womb."(4) In the Bhárata also, "The mother, is the fosterer: the son is of the father: he is [as it were] that very person by whom he is produced". A passage of revealed law is likewise [confirmatory]. "His-self is truly born a son."

14. And, from the intimation of the agency of both together, by the verb 'give' in the dual in Manu's text, the competency of both united is important. Accordingly, Vasishṭha says: "Man, produced from virile seed and uterine blood, proceeds from his father and mother, as an effect from its cause, therefore, his father and mother have power to give, to sell, or to abandon their

(1) Vasishṭha, xv. 5.
(2) Yájñavalkya, ii. 152.
(3) Manu, ix. 168.
(4) Not found in Baudháyana of the S. B. E. Series.

sons."(1) Baudhayána also. "For the connection to the father and mother, is equal."(2)

15. Conformably, in this passage, ("the mother or father given") Manu, intending—from her dependence on the assent of her husband, the inferiority of the mother [as the agent, in the gift of a son];—the mediocrity of the husband, on account of his independence of the wife;—and the pre-eminence of both united, from their being equally parents,—propounds each position in order last, according as he prefers it to that preceding.

16. It must not be argued that this is merely a single sentence, on account of the only verb being used in the dual number: for the disjunction in the middle by the particle '*or*' would be inconsistent. Therefore the passage in question comprises three propositions.

17. Accordingly, the chief of saints in this passage, "whom his mother or his father gives," has used the verb in the singular number even, though referring to each [nominative case.]

18. On the subject proposed, Saunaka assigns a reason,—"on account of difficulty (prayatnatas)." That time in which there is great trouble is [a time of] difficulty, that is, a season of calamity.

19. Hence, the meaning is this;—a gift of a son is to be made in a time of calamity only: not otherwise. Thus Kátyáyana says: "But during a season of distress, the gift or sale even may be made; otherwise he must not attempt the same. This is the injunction of the holy institutes."(3) From the context,—"of sons and wives," is understood. Manu also: "Whom his mother or father gives during distress, confirming the gift with water."

20. "During distress"] in a famine, and so forth: should the gift be made, no distress existing, the giver commits a sin on account of the prohibition, "otherwise he must not attempt the same."

21. Or, the term 'prayatnatas' may signify—'on account of difficulty of the adopter.' During distress; that is,—when destitute of male issue: on account of the text of Atri, commencing,—"By a man destitute of a son only, must a substitute for the same, always be adopted, &c.": and it is thus interpreted, even by Aparárka, and in the Chandriká. "'During distress'—that is,—the adopter having no son."

22. Another special rule is propounded in the Káliká-purána: "Sons given, and the rest though sprung from the seed of another, yet being duly initiated under his own family name, become sons. O Lord of the earth, a son having been initiated under the family name of his father, unto the ceremony of tonsure inclusive, does not become the son of another man (anyatas). The ceremony of

(1) Vasishtha, xv. 1 and 2. (2) Baudháyana i. 5; ii. 23.
(3) II. Cole. Dig., 406, vii.

tonsure and other rites (chuḍádya) of initiation, being indeed performed, under his own family name, sons given, and the rest may be considered as issue: else, they are termed slaves. After their fifth year, O King, sons given, and the rest are not sons. [But having taken a boy five years old, the adopter should first perform the sacrifice for male issue. But the son of a twice-married woman, immediately on being born, he should duly take as a son. Having performed positively (*vai*) for such, immediately on being born, the burnt sacrifice for the son of a twice-married woman, the man should complete every initiatory rite, the ceremony for a male born (játakarma) and the rest. The burnt sacrifice for the son of a twice-married woman, being completed, from these (tatas) a son of that description, is filially related."(1)

23. The meaning is,—although sprung from the seed of another, sons given, and the rest, when 'duly initiated under his own family name,' (that is, by the adopter, according to the form prescribed by his own code, under the family name of himself,) into the different rites, commencing with that for a male born, then become sons of the adoptive parent, not otherwise.

24. Vasishṭha declares this,—"And a given son, even sprung from one following a different branch of the Vedas, being initiated [by the adopter], under his own family name, according to the form prescribed in his own branch of the Vedas, is a follower of the same branch."(2)

25. "The son given, and the rest." By the term "rest," here used, the son made, and the others, are included; on account of this part which preceded [in the Káliká-purána.] "The legitimate son, the son of the wife, the son given, the son made, the son of concealed birth, and the son rejected, take shares of the heritage. The son of an unmarried girl, the son of a pregnant bride, the son bought, the son by a twice-married woman, the son self-given, and the slave's son; these six are contemptible as sons: on failure of the first in order respectively, let him invest the next with filial rights. But let him not appoint to the empire the son of a twice-married woman, nor a son self-given, nor one born of a female slave."(3)

26. The non-appointment to empire of the son of the twice-married woman, and the other two, which is directed in the latter part of this quotation, holds, even on default of any other son besides the legitimate son. For this part of the passage is subjoined as an exception to the preceding part ("on failure of the first would be respectively, &c."), and their non-succession to the empire should a legitimate son exist, was declared in this preceding passage.—"A legitimate son existing, let not the king invest in the empire, the wife's son, and the rest: [nor] cause to be completed [through such sons] the solemnities for his forefathers."

(1) II. Cole. Dig., 329, clxxxii and clxxxiii.
(2) Not found.
(3) II. Cole. Dig., 333, cxcii.

27. The meaning is,—A legitimate son existing, let him not invest with empire the son of the wife, and the rest: '[nor] cause to be completed,'—that is, nor cause to be performed [by such inferior sons] the 'solemnities,' meaning the sráddha and the other rites, in honour of his forefathers.

28. "Under the family name (gotrena)."] Although it is not ordained that the family name is immediately instrumental in the ceremony, for a male born, and others; still since, in the vriddhi-sráddha, a competent essential of those ceremonies, use of the family name, is made; it applies also to what is principal, [viz., those ceremonies themselves]. But in the rites of tonsure and the rest, it is used directly; for a text states: "The coronal locks of the boy, must be made with the enunciation of his patriarchal tribe (gotra)."

29. It is declared that filial relation proceeds from initiatory rites: these [as applicable to different cases], the author propounds affirmatively and negatively—"a son having been initiated, under the family name of his father, &c., &c."

30. That son, who is initiated under the family name of his natural father, unto the ceremony of tonsure, that is, in rites ending with that of tonsure, does not become the son of another man—'anyatas' must be rendered, in the sense of the regular genitive, 'anyasya' ('of another').

31. In respect to the passage in question, there is this reconciliation.—It must certainly be affirmed, that, what is there declared, that one on whom the ceremony of tonsure is completed, becomes not the son of the adopter, refers to the state, as son not in common; otherwise by this part,—"Having taken a child of five years, &c.," the propounding one even, whose ceremony of tonsure has been completed, to be son of the adopter, would be contradicted. That this passage necessarily regards a child on whom the ceremony of tonsure has been performed, will be made clear (v. § 48).

32. Hence, if one who has been initiated in the different rites down to tonsure be adopted, he becomes son of two fathers: for he is initiated under both family names; and that the effect of this is his connection to both families, will be declared in the sequel.

33. Thus, the different initiatory ceremonies, from that for a male born down to tonsure inclusive, are declared to be the cause of filiation.

34. Áchúdam ('unto the ceremony of tonsure') might have been used [by itself]. The subjunction of the term 'inclusive' (anta) is for the sake of authorizing the affiliation of one whose coronal locks have not been made according to the form of his patriarchal tribe. For the principal rites not being completed, he is capable of becoming a son, and the part, commencing—("The ceremony of tonsure and other rites of initiation, &c., &c.,") is about to be explained.

35. What should be done, should a boy, on whom the rites, commencing with that for a male born, have not been performed, not be procurable? Anticipating this question, the author, adds—"the ceremony of tonsure and other rites of initiation, &c."

36. When, indeed, the rites of initiation, commencing with that of tonsure, are performed under his own family name,—that is—under the family name of the adopter, (the particle '*vai*' [indeed] having an exclusive import): then only can sons given and the rest be considered as issue, else they are termed slaves.

37. The complex phrase "chúḍádya" signifies those rites, of which tonsure is first; but not rites antecedent to tonsure. For with reference to what preceded tautology would result.

38. Therefore, even should the ceremonies commencing with that after birth and ending with that of 'annaprásana' or feeding with rice, have been performed under the family name of the natural father, there is no repugnancy [in the adoption]: and thus it is established that the child, on whom the ceremony for a male born and the rest, have not been performed, is principal [as the object of adoption]; and one on whom the rite of tonsure has not been performed [but the other previous rites have], is secondary.

39. Sons given, and the rest.] By the term 'rest' are included the son made, and the others, as has in fact been declared: they become sons by initiatory ceremonies also: not merely by adoption; for that would defeat the opposite alternative subjoined, "else they are termed slaves."

40. 'Else.] The meaning is, should the ceremony of tonsure, and the rest, not be performed [by the adopter], or should one be adopted, on whom the ceremony of tonsure and other rites have been performed; a servile state ensues, not that of a son.

41. Since that filial state is produced from ceremonies in the same manner as the being a sacrificial post and so forth; it is established that one uninitiated is to be adopted.

42. A limited period for adoption being necessary, the author adds, "after their fifth year, &c."

43. One, though uninitiated, is not to be adopted after the fifth year: for the time having gone by he cannot become a son. By this it is declared that the five [first] years only are the season for adoption. Now, the propounding this position negatively is for the purpose of shewing that an age beyond five years is not even a secondary season: for otherwise by the rule ("every season ulterior to the appropriate season is pronounced secondary"), it would follow that any time beyond the fifth year were secondary.

44. And therefore, as by this passage "commencing from birth, unto the third year, &c.,") the third year is the principal season for its performance: and since year is mentioned in the conclusion ("after the fifth year, &c.,") it follows that in the extract in

question, the word 'tonsure' is meant to signify the third year. For otherwise the consequence would be, that, where the ceremony of tonsure took place at the same time with the investiture of the characteristic cord, at his eighth year, one on whom the ceremony of tonsure had not been performed, might be adopted. Nor would what was meant thus result: for it would be at variance with the part commencing "after the fifth year, &c."

45. Hence, it is established that the term 'tonsure,' in the passage,—"unto tonsure inclusive"—intending also, the third year, [limits] the proper season: that beyond the third year, to the fifth, is the secondary season: but that after that no time is even secondary.

46. 'Are not sons.'] By this it is intimated that though filial relation be not produced, yet tonsure and other rites of initiation may be completed; for the time for the performance of these, respectively, yet exists: still, however, they are only slaves, for filial relation is wanting; and this is the third cause of a servile state.

47. "Let not wives and sons, being unwilling, undergo sale, nor even gift."(1) As for the prohibition in this text of Kátyáyana against the gift and so forth, of persons unwilling, that also must be interpreted as forbidding the gift of a boy of five years only: not of one older.—And:—"one discriminating not a minor." As for what is thus interpreted by Sarvajñya, adverting to this reading,—("discriminating good and evil") in the text,—"whom a man takes being alike, &c.,"(2) that must be explained thus—'a boy of five years only, discriminating by the faculty of reason: but not a minor [generally].' The meaning is, "he should not take [any] one coming within this definition,—'a minor (bála) is till the sixteenth year.'

48. Then, if there be none uninitiated [unto tonsure inclusive], what is to be done? In reply to this the author adds,—"having taken, &c." The meaning is,—having taken a boy five years old,(a) initiated in rites ending with tonsure.

49. But how can such be adopted, since he is declared to be a slave? Anticipating this objection, the author subjoins,—"The adopter should first perform the sacrifice for male issue." The objection is thus reconciled.

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(1) I. Colc. Dig., 406, vii. (2) Manu, ix. 169.

(a) The text of the Káliká-purána on which the limitation as to the age of the adopted son is based has been held to be spurious by the author of the Dattaka-Chandriká. All the High Courts and many of the modern text-writers are agreed in holding that the Hindu Law imposes no restrictions as to age. Whatever be the age of the adopted son, it is now settled that his adoption is valid if made before Upanayana if he belongs to any of the regenerate classes and before marriage if he belongs to the Súdrá caste. In Bombay where the authority of the Mayúkha is paramount, even married men could be adopted. In Madras it has been held that a boy could be adopted after Upanayana has been performed if he be of the same gotra with the adopter. (*Viraraghava* v. *Ramalinga*, I. L. R., 9 Mad. 148). For a full discussion on the question of age, see Mandlik, p. 471, *et seq.*

50. "He who is desirous of issue should offer to Agni, parent of male offspring, an oblation of kneaded rice roasted on eight potsherds; and to Indra, father of male issue, a similar oblation of rice roasted on eleven potsherds. Fire grants him progeny, Indra renders it old." In this passage [of the Vedas] sacrifice is declared as a cause productive of offspring.

51. Hence, in the case where the offspring is not born its production is the effect to be produced: but where offspring already born is adopted, it is implied, that, in that case, since the birth has taken place, the filial relation is the effect to be produced: for otherwise the precept proposed would not be accomplished. Now, this relation cannot subsist without the removal of the servile state: therefore the removal of that also [by the sacrifice,] must of necessity be admitted: otherwise were [the sacrifice] productive of filial relation only it would take place in any mere adoption of a son; and if [it be argued that] there it is not required, since the filial relation is produced from initiatory rites only; then, the same is the case, in the instance proposed: for those rites are here inferred from the term 'first;' and it is declared in the sequel; "The man should complete every initiatory rite, the ceremony for a male born and the rest."

52. Therefore, since filial relation, preceded by the removal of the state of slave, which had been occasioned by previous initiation is produced by a sacrifice for male issue, it is established that one though initiated [unto tonsure inclusive,] may be adopted.

53. If this is the case, then the passage should only recite,—"Having taken one initiated [unto tonsure inclusive]." What occasion is there to use the expression, "a boy five years old"?—Should this be objected to, it is erroneous; for the passage intends this restriction—'a boy five years old only: and the restriction' is for the sake of securing an investiture of the characteristic thread, conducive to the holiness, resulting from the study of scripture, which is preceded by the previous acquisition of letters.

54. And it must not be argued that a restriction is established by the preceding sentence: for this from its limiting the period for [the adoption] of one whose initiation [as far as tonsure inclusive,] has not been performed, is received as not intending the meaning in question.

55. 'First',—that is, previous to initiatory rites being performed.

56. But it is asked, why is it not meant,—"previous to the sacrifice for adoption"? Because, the past participle "having taken" being used, an antecedent time for the act of adoption, including all its essentials, is inferred: and the previous initiatory rites being annulled by the sacrifice for male issue, the performance of other rites is absolutely necessary.

57. "After their fifth year, sons given, and the rest are not sons." In respect to this previous position the author subjoins an exception: "But the son of a twice-married woman, &c."

58. "A child begotten on a woman whose [first] marriage had not been consummated, or on one who had been deflowered [before marriage], is called the son of a twice-married woman."(1) By this definition, one born on a twice-married woman, of any of the seven descriptions, is included.

59. 'Immediately on being born'] that is, as soon as produced: hence the time of birth only is meant, no other.

60. Duly take] that is, adopt according to the rules of adoption.

61. But, for one just born, is not the ceremony for a male born, alone proper, on account of this rule,—"Before others have touched the new born boy, &c." Therefore, how can it be said: "Immediately on being born he should duly take as a son"? True; for, then, on one unadopted, not having filial relation to the man himself, initiatory rites could not be performed: for a text of Smriti says:—"Let the father initiate his own sons, &c."

62. Neither can it be said that paternal right proceeds alone from the relation as natural father: for this is denied by this passage,—"the receptacle is more important than the seed;"(2)—and a text of Gautama recites, "of the other by special agreement, &c."(3) The meaning is [the child begotten on one man's wife] is the son of the other,—that is, the procreator,—by special agreement only, &c.

63. Hence in the case in question, adoption takes place anterior to the performance of the ceremony for a male born.

64. The performance of the initiatory rites being inferred, as following the adoption, the author propounds a variation in this respect: "Having performed, &c." The meaning is this: After the adoption, having performed the burnt sacrifice for the son of a twice-married woman, subsequently let him perform the ceremony for a male born, and the other initiatory rites.

65. But is not this inconsistent, since it is contrary to the argument, exemplified in the sacrifice [to fire] for a son born? Accordingly, on the same principle, as this is ordained, so is the burnt sacrifice, for the son of a twice-married woman, directed in the case in question. [Now this according to your opinion] is performed, previous to the ceremony for a child born: therefore, since it is to be completed in five days, the principal rite [being the ceremony] in question would be barred.

66. Should this be objected: it is replied, that, in the case in question, the burnt sacrifice for the son of the twice-married woman is not analogous to the sacrifice [to fire] for a son born,

(1) Yájñavalkya, ii. 130. (2) Manu, ix. 52.
(3) Gautama, xviii. 10.

which is ordained in respect to spiritual purposes. Besides [that used] may be a mere unrestrictive order of mentioning the former sacrifice, and the ceremony for a child born, and other rites for a son produced from the wife of another: in the same manner as in this passage,—"Having performed the sacrifices prescribed for the day of the new moon, and that of the full moon, let him offer an oblation with the Soma plant." Thus there is no inconsistency.

67. The particle *vai* [positively] having an exclusive import, the construction is,—"For one directly after birth only, at no other time:"—therefore, a restriction as to the priority in time, or otherwise, of the sacrifice, for the son of the twice-married woman, is not deduced; as in the case of the sacrifice [to fire] for a son born.

68. By the term 'every' alone, the meaning being complete, the mention of the ceremony for a male born, and the rest, is added to exclude anterior rites whilst the offspring was in the womb. As for the use of the expression 'all,' notwithstanding the mention of the ceremony for a son born and the rest: that is, for the purpose of suggesting whatever initiatory rites may belong to any particular individual; and hence, it is to be inferred that although for Súdrás there is no investiture of any characteristic cord, and so forth, still they become sons even by the ceremony of tonsure and other rites.

69. "The man." Although a general expression is used, still since one of the three first classes only is competent to perform the burnt sacrifice for the son of the twice-married woman; in respect to others the filial relation proceeds from mere initiation alone.

70. The author thus concludes, that the burnt sacrifice, and initiatory rites united, are the cause of filiation; "Being completed, &c., &c."

71. The meaning is: the burnt sacrifice for the son of the twice-married woman, being completed, 'from these,' that is,—from these initiatory rites,—a son of the twice-married woman becomes filially related.

72. Under the same head, the author of the Káliká-puráṇa propounds a rule applicable to the son of the twice-married woman. "He should perform, at the sráddha of his father, a rite dedicated to a single ancestor (ekoddishta); not any párvana, or double rite, and so forth."

73. The son of a twice-married woman, at the anniversary of his father, on the anniversary of the day of death, should perform rites dedicated to a single ancestor, not any párvana, or double rites, and so forth.

74. By the terms "and so forth," the different variations of the párvana rites are likewise prohibited. For a text of Játúkarṇa states,—"Annually, let the son of the wife, and legitimate son, perform [obsequies] according to the párvana form: the

other ten sons should perform a rite, dedicated to a single ancestor," —and a text of Parásara, recites: "By the legitimate son, for a father, who has departed this life, on all occasions, is in honour of three ancestors: that, by those of a different general family, is consecrated to a single ancestor, on the anniversary of the day of death."

75. On the subject of sons it had been said,—"The son self-given, and the slave's son (dása-putra)." Of these he describes the latter: "A female purchased by price, who is enjoyed, is a slave: it is thus declared. The son who is begotten on her is considered a slave-son."

76. That female, though of equal class, being purchased by price, who is 'enjoyed,'—cohabited with,—is denominated by former sages a slave. For a text states,—"That woman, who is bought by price is not considered a wife: she neither [avails] in rites, in honour of the gods, nor in rites, in honour of the manes. The sages regard her as a female slave."(1) One born on her is a slave's son. The son of a female slave is 'a slave's son' (dása-putra), the feminine of 'dása' (slave) being like the masculine in the Vedas.

77. Or, the compound 'dása-putra,' may be explained,—'one who is both a slave and a son' or, thus—'a son denominated a slave.'

78. The author lays down the rules regarding this son,—"[Such a son] must not participate in the dominion of a king: nor of Bráhmins, perform the sráddha; he is the lowest of all sons: hence, let him reject him."

79. The meaning is,—since he is lowest of all sons he must not share in the dominion of a king, nor perform the sráddha of Bráhmins.

SECTION V.

The mode of adoption—Form by whom propounded—Necessity of observance—Effect of omission.

1. The qualification of the person to be adopted has been defined. The mode is now propounded.

2. On this subject Saunaka has said: "I, Saunaka, now declare the best adoption: one having no male issue, or one whose male issue has died, having fasted for a son."

3. 'Adoption'—the form of adoption. Having fasted on the day preceding that of adoption. Vriddha Gautama has "The impotent man, or also, one whose offspring has died."

4. "Having given two pieces of cloth: a pair of ear-rings, a turban, and a ring for the fore-finger, to a priest religiously disposed,

(1) Baudháyana, i, ii, 21—2.

a follower of Vishṇu, and thoroughly read in the Vedas; having venerated the king and virtuous Bráhmins, by a 'madhuparka' (or prepared food consisting of honey, liquid butter and curds);"—

5. 'The king' here signifies, the chief of the village, for a text of Vriddha Gautama recites,—"having invited all kinsmen and the chief of the village also."

6. As for also the term, 'Lord of the soil (Prithívísáli)' in a subsequent passage of the same author even,—"After this, let him give a madhuparka to the Lord of the soil:"—that intends only the owner of the village: for this being expressed in what preceded is the more forcibly suggested.

7. The meaning is,—having venerated three Bráhmins by a madhuparka, and so forth, for the purpose of asking.

8. "Both a bunch of sixty-four stems, entirely of the kusa grass, and fuel of the palása tree also: having collected these articles, having earnestly invited kinsmen and relations";—

9. 'Kinsmen' (bandhún)—his own, his father's and mother's kinsmen. 'Relations' (jnyátin)—sapiṇḍas. The invitation of kinsmen and the others, is for the sake of their witnessing: in the same manner, as the invitation of the king: for both terms are confirmatory of this, in the sense,—'They unite with (badhnanti),—and know (jánanti) as their own, the adopted person.'

10. "Having entertained the kinsmen with food: and especially Bráhmins." The meaning of this is,—having entertained the invited kinsmen and Bráhmins, previously appointed, and (on account of the conjunction 'and' in § 8) invited relations.

11. "Having performed the rites, commencing with that of placing the consecrated fire, and ending with that of purifying the ghee. Having advanced before the giver, let him cause to be asked thus,—'give the boy.'"

12. The meaning is,—let him cause to be asked through Bráhmins, previously appointed.

13. "The giver, being capable of the gift [should give] to him with the recitation of the five prayers, the initial words of the first of which, are,—ye-yajñena, &c."

14. The capacity to give, consists in having a plurality of sons, and the assent of the wife, and so forth.—'Should give,' is understood before this part,—"with the recitation of the five prayers"; for gift is indicated in the prayer, commencing—"Let him receive a male from an intelligent person."

15. "Having taken him by both hands, with the recitation of the prayer, commencing,—'devasyatva, &c.;' having inaudibly repeated the mystical invocation 'Angádangát, &c.,' having kissed the forehead of the child: having adorned with cloths, and so forth, the boy, bearing the reflection of a son:"—

16. 'The reflection of a son.'(a) The resemblance of a son,—and that is, the capability to have sprung from [the adopter] himself, through an appointment [to raise issue on another's wife], and so forth; as [is the case] of the son, of a brother, a near or distant kinsman, and so forth. Nor is such appointment of one unconnected impossible; for the invitation of such [to raise issue] may take place under this text of Smriti: "For the sake of seed let some Bráhmins be invited by wealth, &c."

17. Accordingly, the brother, paternal and maternal uncles, the daughter's son, and that of the sister, are excluded: for they bear not resemblance to a son.

18. Intending this very position, it is declared in the sequel, by the same author:—"The daughter's son, and the sister's son, are declared to be the sons of Súdrás. For the three superior classes, a sister's son is nowhere [mentioned as] a son." Here even, the term 'sister's son' is illustrative of all not resembling a son, for prohibited connection is alike an objection to them all. Now, prohibited connection is the unfitness, [of the son proposed to be adopted,] to have been begotten by the individual himself, through appointment [to raise issue on the wife of another].

19. "The mutual relation between a couple, being analogous to the one being the father or mother of the other, connection is forbidden, as for instance,—the daughter of the wife's sister, and the sister of the paternal uncle's wife." The meaning of the text is this. Where the relation of the couple, that is, of the bride and bridegroom, bears analogy to that of father or mother: if the bridegroom be, as it were, father of the bride, or if the bride stand in the light of mother to the bridegroom, such a marriage is a prohibited connection. The two examples illustrate these cases in their order.

20. In the same manner as in the above text of the Grihyaparisishta on marriage, prohibited connection, in the case of marriage, is excepted; so, in the case in question, [one, who, if begotten by the adopter, would have been the son of] a prohibited connection, must be excepted; in other words, such person is to be adopted as with the mother of whom the adopter might have carnal knowledge.

21. "Accompanied with dancing, songs and benedictory words, having seated him in the middle of the house: having,

(a) Out of this expression a whole body of law bearing on adoption has been evolved. The Sanskrit original is 'putrachchháyávaham' which simply means 'bearing the resemblance of the son, just as the shadow bears the resemblance of the figure of which it is the shadow'. The expression has somehow been construed to mean 'capable of being begotten on his mother by the adopter,' and hence it has now been settled by a series of decisions that in order that an adoption may be valid, a valid marriage between the adopter and the mother of the adoptee in her maiden state must be possible. The key to this interpretation of the Sanskrit original is afforded by the doctrine that adoption imitates nature. The Courts, however, see no difficulty in recognising an adoption by a minor of sixteen years of age, of another fifteen years old. For a discussion on the interpretation of this expression, see pp. 166—168, Bhattacharji's "Hindu Law," and pp. 480—487 of Mandlik's "Hindu Law."

according to Sastras, offered a burnt offering of milk and curds, (at each incantation,) with recitation of the mystical invocation,—'Yastvá-hrida:' the portion of the Rig-veda, commencing,—'tubhyam-agne:' and the five prayers, of which the initial words of the first are Somo-dadât, &c."

22. The meaning is,—with such seven incantations, having offered seven burnt offerings of milk and curds.

23. Vriddha Gautama, propounds a special rule: "Let him, then, cause to be offered, as burnt offerings, a hundred oblations of milk with ghee, contemplating in his mind, as the object, the lord of created beings, with recitation of the prayer 'prajápate-natvá-detam, &c.'"

24. The stanzas, which follow the passage, [of Saunaka last quoted,] commencing,—"The adoption of a son, by a Bráhmin, &c.," and ending with,—"such gift is to be made, on account of difficulty,—" having been before explained.

25. Next in order to these stanzas is this passage,—"Let the best of the regenerate to the extent of his ability bestow a gratuity on the officiating priest."

26. "The best of the regenerate."] a Bráhmin.

27. "A king half even of his dominion: next in order, a Vaisyá three hundred pieces."

28. 'Half even of his dominion.'] The produce for one year, of half his dominion; for a text of Vriddha Gautama recites,—"Let him proffer the profits, arising from half his dominions received in one year." And this is with respect to one of the royal class.—'Pieces'] three hundred stampt coins (nánaka), and this must be understood to mean of gold, silver or copper, with reference to the state of the individual, being superior, middling, or inferior, respectively, on account of the text of Vriddha Gautama,—"Let him proffer three hundred pieces in gold, or in silver, or in copper, according as his condition may be superior, or otherwise."

29. "A Súdrá, the whole even of his property: if indigent, to the extent of his means."

30. "The whole of his property"] that is, the amount earned by labour of one year: for the expression,—'Received in one year,'—is not special: and there is this prohibition, "if offspring exist, the whole of the property must not be given."

31. Vasishtha propounds another mode. "Man produced from virile seed and uterine blood, proceeds from his father and his mother, as an effect from its cause. Therefore, his father and mother have power to give, to sell, or to abandon, their son. But let no man give or accept an only son: for he is [destined] to continue the line of his ancestors. Let not a woman give or accept a son unless with the assent of her husband. A person being about to adopt a son should take an unremote kinsman, or the near relation of a kinsman, having convened his kindred and

announced his intention to the king, and having offered a burnt offering, with recitation of the prayers denominated 'Vyáhriti' in the middle of his dwelling. But if a doubt arise, let him set apart, like a Súdrá, one whose kindred are remote. For it is declared [in the Vedas] 'many are saved by one.' When a son has been adopted, if a legitimate son be afterwards born, the given son shares a fourth part."(1)

32. Of this, the part commencing from,—"Man produced from virile seed and uterine blood, &c." and ending,—"unless with the assent of her husband,—" has been already explained.

33. 'Kindred'] the kindred of himself, his father and mother. 'The king'] the chief of the village. 'Dwelling'] his house.

34. "With recitation of prayers, &c.'] On conclusion of the 'ájyabhága' sacraments, having offered with fire, four oblations with recitation of the prayers, denominated "Vyáhriti" severally, and collectively. Such is the meaning.

35. 'An unremote kinsman.'] This has been explained.

36. 'But if doubt arise, &c.'] He whose kinsmen are in a distant country is one whose kindred are remote, being widely different by country and language: should such a person be adopted, a doubt even exists, with respect to his lineage, disposition, and so forth; this being the case, let him set him apart like a Súdrá: until the ascertainment [of doubtful particulars] let him not hold communion with him; this is the meaning.

37. On this point the author subjoins a passage of Sruti as a reason. "It is declared, &c.," through one son, 'many,'—the father and other ancestors,—are to be saved. On this account the adoption of a son takes place: not that through one many may be condemned: now, a doubt existing, on one side, condemnation is possible: therefore, he should not hold communion with him: for an offence, though eventual, must be avoided.

38. But the author of the Kalpataru, adverting to the reading,—"asannikrishtam-eva"—says: "'one even whose kinsmen are not at hand, (asannikrishtam-eva)'—even one whose good or bad qualities are not known. The particle '*eva*' has the sense of, 'even—or though'. 'But if doubt arise';—on account of his kinsmen not being near, should a doubt, with respect to his class arise; considering him as a Súdrá, let him set him aside, destitute even of initiation. A Súdrá even, is indeed a son; this is the implied import."

39. Either of these expositions of the implied meaning is inaccurate: for the adoption of one of a different class is forbidden. Therefore the passage in its obvious sense only is correct.

40. After the adoption of a son given, should a real legitimate son be born, the author (Vasishṭha) propounds a special pro-

(1) Vasishṭha, xv. 1—9.

vision with respect to the division of the heritage ;—" when, &c." The meaning is : this son given, being adopted, if a real legitimate son be born, then the son given, receives a quarter share : not an equal share.

41. It should be considered, whether this form [adoption] in question, is to be applied, [generally] to the son bought, and the rest, or its application be determined by the distinction in the part which preceded :—" to give, sell, or abandon their son."

42. Baudháyana, propounds a particular rule, for those following the Taittiri portion of the Vedas ;—"We are about to explain the mode, for the adoption of a son "—(here follows the same, as in the quotation from Vasishtha, from "Man produced, &c.," down to, "unless with the assent of her husband"). "One about to adopt produces two pieces of cloth, a pair of ear-rings, a ring, and a priest thoroughly read in the Vedas, a bunch of sixty-four stems of the kusa grass, and fuel of the 'purna' tree. Then having invited kinsmen, into the middle of the dwelling, and having made a representation to the king : having sat down by the direction of a Bráhmin, in the assembly, or in the middle of his house : having caused to be exclaimed, auspicious day ! benediction ! prosperity ! : having performed rites, commencing with the recitation of the prayer 'Yaddeváyajna,' down to the placing the vessels for water : having advanced before the giver, let him thus beg, 'give me this son.' The other replies, 'I give'. He receives the child [and says] 'I received thee, for the sake of religious duty. I adopt thee, for offspring.' Then having adorned him, with cloths and ear-rings and ring : having performed the investiture, and other ceremonials, down to the kindling a flame of fire : having dressed the oblations, he offers a burnt offering. After having recited the incantation in the first chapter of the [Yajur] Veda, commencing '(Yas-tvá-hridákírinámanyamána)' with recitation of the sacrificial prayer " Yasmai-tvan-sukritejáta-vede, &c.," he offers a burnt offering. Next, having performed the burnt sacraments, where the prayers denominated 'Vyáhriti' are recited : [and] that designated 'svishṭa-krit' with other ceremonials, being completed, down to the bestowing an excellent cow, he presents the fee [saying, 'yours are] these two cloths, the ear-rings, and the ring likewise.' But subsequently, if a real legitimate son is born, he [the adopted son] succeeds to a fourth share ; so says Baudháyana."(1)

43. As for the text of Vriddha Gautama, "A given son abounding in good qualities (yatha-játe) existing : should a legitimate son be born at any time : let both be equal sharers of the father's whole estate ",(2) that must be construed as supposing the former possessed of good qualities, and the legitimate son, destitute of the same : on account of the epithet 'yatha-játa' ('abounding in good qualities'). He, in whom there is a játa,' that is an assemblage (samuha) of good qualities, (implied by 'yatha'), is 'yatha-játa,'—one abounding in good qualities. This is

(1) Baudháyana Parisishta, vii. 5, 1-16. (2) Manu, ix. 141.

the meaning; for, the term "yatha" is significant of similitude, depending on quality.

44. Accordingly, by this text, ("of the man, to whom a son has been given, adorned with every virtue, he even shall take the heritage, though duly brought from a different family,")(1) Manu has declared on default of the real legitimate son, the succession [of the son given] to the whole heritage. Therefore, his participation of a moiety, a legitimate son [not possessing good qualities] existing, is even proper.

45. The same author propounds a special rule, should the due form for adoption, not be observed: "He, who adopts a son, without observing the rules ordained, should make him a participator of the rites of marriage: not a sharer of the wealth."(2)

46. The meaning is; the marriage only, of one adopted, without the form for adoption, is to be performed; no wealth is to be bestowed on him: on the contrary, in such case, the wife and the rest even succeed to the estate: for without of observance of form, his filial relation is not produced.

47. Accordingly, Vriddha Gautama: "The sons given, purchased and the rest, who are adopted from those of his own general family, by observance of form acquired the state of lineage [to the adopter]; but the relation of sapiṇḍa, is not included."(3) Here, there is this restrictive rule: 'by observance of form only, acquired the state of lineage;' for the forms for gift, and so forth, from being comprehended in the descriptions of the son given and the rest, [are necessary to] complete the peculiar nature of each. For instance, [in Manu's description of the son given], it is said: "given as a son in a time of distress, confirming the gift with water"; here the mention of water is illustrative of the whole form necessary, for the gift [of a son]; and hence the form for adoption also is implied; for a text of Manu, says,—"Though duly brought from a different family." The meaning is, 'obtained legally,—according to form.'

48. "Purchased and the rest." By the word 'rest' the sons made, deserted and self-given, are included. For, by the expression "as specified" in the text subjoined, it is declared by Manu that those only who are qualified by the form indicated, in their respective descriptions, are substitutes for sons. "The sages declare these eleven sons (the son of the wife, and the rest), as specified, to be substitutes for the real legitimate son; for the obsequies would fail."(4) Accordingly, in the description of the son made,—"whom being equal in class a man affiliates (prakuryát), &c.,"—by the preposition '*pra*' [which has a perfective import],—in the description of the son deserted "whom a man receives (pari-grihníyát) as his own son, &c.,"—by the preposition '*pari*' [implying thoroughly],—and in the description of the son self-given,—"who offers

(1) Manu, ix. 141.
(2) Not found.
(3) Not found.
(4) Manu, ix. 180.

(sparsayet) himself, &c.,"—by the verb '*offer*' synonymous with 'give,' reception in adoption (parigraha) with the observance of form, is declared.

49. Intending the same, after having premised,—"therefore his father and mother have power to give, sell or abandon their son," by Vasishṭha also is the form for adoption declared: "A person being about to adopt a son, &c." Now from the expression 'adopt' (parigraha), this form is to be applied to the adoption likewise of the sons made, or self-given: for the same is implied by Manu by each preposition respectively [in their several descriptions.]

50. Therefore the filial relation of these five sons proceeds from adoption only with observance of the form of either Vasishṭha or Saunaka; not otherwise.

51. As has been determined in the case of the son of the wife by Manu and Yájñavalkya: for, [the necessity of] observing form is declared affirmatively and negatively in these and other texts—"Even the son of a wife duly authorized not begotten according to law is unworthy of the paternal estate. For he was procreated by an outcast."(1) "Either brother appointed for this purpose who deviates from the strict rule and acts from carnal desire shall be degraded, &c."(2)

52. As for what is declared in the Subodhiní, a commentary on the Mitákshará,—"And the elders regard that property as temporal; like the filial relation and so forth:" that must be rejected, as contradicted; since it is repugnant to authorities cited: and because from the adoption only of a holy saint (ársha) (that is,—one propounded by a holy saint) the relation as son is declared to proceed by Paiṭhinisi in this text; "Now these sons given, purchased and made, and the son of the appointed daughter who are in this case affiliated through the adoption of a holy saint by another are not sons of two fathers [being] unconnected to those of the family, (asangata-kulínádvyámushyáyaṇá)."

53. Such, to whom those of the family (that is, the family of the natural father) are not connected, [are asangata-kulína; and] persons not sons of two fathers and the same, are asangata-kulínádvyámushyáyaṇá. The meaning is,—those who are adopted according to the form of a holy saint are not allied to those of the family of the natural father: therefore they are not sons of two fathers.

54. Or the reading 'Dvyámushyáyaṇá' (sons of two fathers) may be admitted. For it will be declared in the sequel, that where both the natural and adoptive fathers perform the different ceremonies, the state as son of two fathers ensues.

55. "Although it may be used like the word "Indra" and so forth; still, since the prevailing sense proceeds from popular

(1) Manu, ix. 146. (2) Yájñavalkya, i. 69.

recognition and the production of [a son] is ordained in holy writ, the general acceptation of 'son,' like the general acceptation of 'wife' and the like, must be understood." By the purport of this and other passages, Medhátithi also declares the filial relation in adopted sons to be occasioned only by the proper ceremonies.

56. It is therefore established that the filial relation of adopted sons is occasioned only by the [proper] ceremonies. Of gift, acceptance, a burnt sacrament, and so forth, should either be wanting, the filial relation even fails.

SECTION VI.

Rule for succession where the real son and one formally adopted; and where one formally and one informally adopted may co-exist—Relation in respect to family and so forth of the absolutely adopted son—of the Dvyámushyáyaṇá—who is described.

1. Next, should the real legitimate son and son given and son adopted, without observance of form be co-existent; the same author propounds the succession to the estate. "Him, existing,—a son being created: and a son given, existing,—one being adopted informally: that estate is his only who is justly master of the father's wealth."(1)

2. "Him,"—the real legitimate son existing; whatever son is created by adoption and so forth; of these to him only, who is master of the father's wealth 'justly,' that is—by obvious inherent right,—does that estate belong: not to another. The meaning is, that if a real legitimate son exist, the adopted son is not a sharer of the wealth: for in the affiliation of a son, the non-existence even of real legitimate issue is an essential condition.

3. Thus a son given, that is, one adopted according to form existing, should a son be made without observance of law: of these likewise the son given only is participant of the estate, not the one adopted without observance of law. Such is the meaning: for ordained form alone produces the filial relation.

4. Should a son given, and the real legitimate son exist together, the son given does not receive the share of an elder brother. This, the same author propounds,—"Subsequent to the adoption of a son given, other sons being born, should the father divide his estate, let him not be the partaker of the share of an elder brother."(2)

5. The meaning is this,—after the adoption of a son given, a legitimate son also being born: the son given does not receive the share of an elder brother.

6. Manu next propounds another rule. "A given son must never claim the family and estate of his natural father. The

(1) Not found.

(2) Not found.

funeral cake follows the family and estate; but of him who has given away his son the obsequies fail."(1)

7. The son given must never claim his natural father's family and estate. Thus, 'the obsequies'—that is, the sapiṇḍi-karaṇa, &c., [which would have been] performed by the son given fails of him who has given away his son.

8. The author of the Chandriká thus explains, "By this it is declared that by the the act alone, creating the filial relation, property of the son given in the estate of his adopter is established, and connection to him as belonging to the same family ensues: But through extinction of the filial relation from the mere gift, the property of the son given in the estate of the giver is extinguished, and connection to the family of the giver annulled."

9. But although by the text of Manu, connection to the family of the natural parent is annulled: what proof is there as to the connection to the family of the adopter being established? On this point Brihat Manu declares,—"Sons given, purchased and the rest retain the relation of sapiṇḍa to the natural father as extending to the fifth and seventh degrees; like this general family, [which is] also that of their adopter."(2)

10. The relation as sapiṇḍa of sons given, purchased and the rest to the natural parent continues: by gift, and so forth, even that does not fail; for by reason of consisting in connection through containing portions [of the natural father], it is not possibly to be removed while the body lasts. By this it is declared that the relation of sapiṇḍa in question is the consanguineal connection only and not connection by the 'pinda' or funeral cake; for that this latter is barred is shewn by this passage,—"Of him who has given away his son the obsequies fail." Anticipating a question as to the extent of this relation as sapiṇḍa, the author adds,—"Extending to the fifth and to the seventh degree, &c." The meaning is this: 'Extending to the fifth degree'—completing five, that is—embracing,—five degrees. So of the expression 'to the seventh degree.'

11. Gautama also, "With the kinsmen on the side of the father [viz. of the procreator (Bíjí)] beyond the seventh degree; and with those on the mother's side beyond the fifth, &c."(3)

12. Here the word 'Bíjí' (the procreator) is used for the sake of comprehending every one, even the natural father of a son given and so forth; not merely the natural father of the son of the wife only: for a text of Manu expresses, "As for these, denominated from the context sons, though produced from the seed (Bíja) of others: they are [sons] of that person from whose seed they severally sprang; and of no other."(4)

13. 'They are sons of that person.' This declaration that they are sons is for the sake of propounding the connection of

(1) Manu, ix. 142.
(2) Not found.
(3) Gautama, iv. 3, 4 and 5.
(4) Manu, ix. 181.

sapiṇḍa [by the body]; and not to establish filial relation. For that would be at variance with the declaration of filial relation [to the adoptive father] contained in this and other texts,—"Of these twelve sons of men, &c." 'Of no other'] not of the adopter.

14. But analogous to the case of the daughter may not the relation of 'sapiṇḍa' to both [the giver and the receiver] be admitted: for like the state of lineage, the relation of sapiṇḍa is established by the adoption.—Should this be objected it is wrong; for it would be at variance with the text of Vriddha Gautama "The sons given, purchased and the rest who are adopted from those of his own general family by observance of form acquire the state of lineage [to the adopter]. But the relation of sapiṇḍa is not included."

15. Those sons given and the rest who are adopted 'from those of his own general family'—from among his general family, acquire by the observance of form 'the state of lineage'—the state of offspring. But in respect to these the relation of sapiṇḍa 'is not included' by the form,—meaning—is not established.

16. If the relation of sapiṇḍa be not established in those even of the same general family, it is declared *à fortiori*, that such relation is not produced in the case of one of a different general family.

17. And this is proper. As [in the case of the daughter] by reason of her proceeding from the father and producing in concert with the husband, the same body [their issue] the relation of sapiṇḍa [by the body] to both is established: in the same manner in the case of the son given it is not established; for though he proceed from the natural father, the producing in concert with the adopter a common body is wanting.

18. Accordingly, Devala in the text subjoined (since the family name, a share of the funeral cake are specified), by the term 'merely,' bars the relation even of sapiṇḍa.—"For the sake of religious merit [being adopted] like the real son under the family name of each respectively (tat-tatgotrena), sons [who are] reared: for such merely participation in a share, and [the oblation of] the funeral cake is declared."(1)

19. But is not this irrelevant to the subject proposed? for it regards the son for religious merit. Thus:—in those sons who, like the real son, are reared for the sake of religious merit 'under the family name of each, respectively,' (that is, under the family name severally of each only,) does the mere participation alone in a share and the funeral cake vest: not (for such is the intent) the relation of sapiṇḍa to the adopter. Hence the text imports the want of connection of sapiṇḍa of that son only to the adoptive father: not of the son given.

20. This objection, if made, is thus answered.—For a son for religious merit (dharma-putra) is not admitted, as [such admission]

(1) Not found.

would be at variance with the enumeration in this text,—"Of the twelve sons of men whom Manu, sprung from the Self-existent, has named, &c.";—or even were such son admitted as he is not classed in the series of heirs, (the wife and the rest,) he could not participate in a share: and the connection of sapiṇḍa not being possibly implied, to forbid it would be unmeaning. Therefore, that text regards only the son: since it propounds participation in a share.

21. Now of the text in question, this is the meaning. 'For the sake of religious merit',—(that is, for the sake of acquiring religious merit obviating the exclusion of the man himself from heaven,) after being adopted 'like the real son,'—that is, as substitutes for the same,) by the adopter, 'under the family name of each, respectively',—(that is, even under a family name, different with reference to the natural father,) sons who are reared: in these merely participation alone in the heritage and [the oblation of] the funeral cake of the adopter vests: not connection as sapiṇḍa. Therefore, it is established that in the text in question the connection of the son given as sapiṇḍa to the adopter is not declared; but, on the contrary, his connection as such extending to the seventh degree inclusive to the family alone of the natural father.

22. But does it not follow on account of proximity, that sons mentioned in the plural number required by the repetition of '*tat*,' are designated by that pronoun, not on account of remoteness, the adopting party becoming possessed of male issue? for,—it would be improper to apply to such, whose plurality is dubious, the repetition:—the pronoun, '*tat*' designating (as it were) a person not immediately obvious, cannot bear an import in the sense of 'átma' (self):—and the possessive pronoun '*sva*' (own) denoting the person immediately obvious, only would have been proper.

23. Should this be alleged: we assert the contrary. According to the maxim,—"The application of pronouns is to the object presented to the mind,"—the adopting party is indicated by the pronoun '*tat*' ('of each, &c.'). For the being the object presented to the mind, depends on being principal: and the being principal, proceeds from being the object to be perfected, or from relation to the effect. Now the father is principal by reason of being the object to whom accrues the effect consisting of heaven, which in virtue of such text as,—"by a son he conquers worlds, &c."—is to be produced by an act, the instrument of which is a son: and because by thoroughly considering this and other texts,—"the rites for the father consisting of oblations of food, and libations of water to be performed by the son, &c."—it appears the father is the object to be perfected as such by rites of oblation of food and so forth, the agent of which is the son.

24. Thus. "He mixes coagulated milk (dadhi) in boiled milk: that is a curd of two-milk whey (ámikshá), an oblation for the Vaisvadeva set of divinities." It being settled that the curd here alluded to by reason of being formed of mingled coagulated

milk and milk is an altered mode of what was intended to be offered: should it be alleged by the opponent that the coagulated milk is what is altered; since that alone designated by the pronoun '*tat*,' (for the coagulated milk mentioned in the accusative case is principal by reason of the milk mentioned in the locative being secondary,) refers to the divinities:—it is thus demonstrated by the supporter of the right opinion, that the milk is what is altered. As the milk is pervaded by the coagulated milk, although the object [of the verb 'mixes'], by reason of this consequent result of the import of the passage,—('he perfects milk by coagulated milk,') the milk alone is principal. Therefore, this only designated by the pronoun '*tat*,' relates to the divinities. Analogous to this, in the case in point also, it is correct to say, that since the father is principal, by being the object to be perfected, he only is designated by the pronoun '*tat*.'

25. But should it be objected, if the son given, bear not the relation of sapiṇḍa to the family of the adoptive father; why should not his marriage take place therein? True, we reply, —on account of his belonging to the same general family.

26. Then his marriage might take place with the offspring of the adopter's sister and so forth, for connection by identity of family and that of sapiṇḍa are wanting: nor do we at present find any text prohibitory of this. On the contrary, there are passages in favour of it such as, "Let not any one marry the daughter of that person, who taught him the sávitrí incantation: but marriage in the general or even in the peculiar family of that person, does not, however, occasion an offence." Yet this not an intended consequence: for it is at variance with the universal practice of good persons, uninfringed, and by holy writ unforbidden. Therefore, what reason is there against marriage in such instance?

27. On this subject, it is replied by a certain author: "She who is not connected, as sapiṇḍa, to his mother and father (pitus), and not belonging to the general family of either, is approved amongst twice-born men, for espousal and connubial intercourse."(1) As for the mentioning a female not connected as sapiṇḍa to the father, in this text of Manu, in which [if the son of the body were regarded,] it should have been expressed,—'not connected as sapiṇḍa to himself'—that is only to declare that the marriage of an adopted son must not take place with a woman connected as sapiṇḍa, to the adoptive father: otherwise, the marriage of a bridegroom, the eighth in descent from the common ancestor, (his kindred being through his father,) with a bride, the sixth from such ancestor, (her descent being through her mother,) might not take place: for being related as sapiṇḍa to the father of the bridegroom, her non-connection as such is wanting. But what was required would not thus result: for it would be at variance with the practice of good persons, and the text of every code of law; such

(1) Manu, iii. 35.

as: "Beyond the fifth and seventh degrees on the mother's side, and the father's side, respectively, (mátṛitah-pitṛitas-tathá) [the relation of sapiṇḍa, ceases]."(1) Nor can it be alleged that this objection is equally applicable to the adopted son also; since it follows, such son, the eighth, and a damsel, the sixth, in degree, by reason of her being related as sapiṇḍa to his father, may not intermarry. For, under this text, subsequently recited, "the relation of sapiṇḍas ceases with the seventh person,(2) &c., &c.," the father of the adopted son, the seventh in descent, not being related as sapiṇḍa to the common ancestor,—by reason of the bride, the sixth in descent, consequently not being so connected to him,—such bride, the sixth, and the father of the bridegroom, the seventh, are not mutually connected as sapiṇḍas as has been already declared. Therefore, there is no inconsistency in alleging that this text even is decisive of the relation of the adopted son as sapiṇḍa [to the daughter of his adoptive father's sister and so forth]."

28. This is very erroneously stated: for either of these alternatives, [one of which under the foregoing construction must be assumed,] is admissible. Accordingly, is the text in question decisive of the relation of sapiṇḍa of an adopted son only; or of both the adopted son and real legitimate son? The first proposition is not correct: the text may, in two ways, relate to the son given; either from such son being the subject treated on, or the text having the same meaning with a special text conclusive of the adopted son's relation as sapiṇḍa. Now, in this case, there is not either of these two causes, since they do not appear. Besides, did the text in question intend the adopted son, the term 'father,' by a secondary import, would mean the adopting father; and that is not intended; for it would be at variance with the rule of logic, "In a precept, the sense of a term is not secondary." Nor also is the second position accurate, since it is forbidden to attach both senses to the word 'father.' Nor is there, as in the instance, "There are fish and a cow-house in the Ganges"—any proof, arguing the implied intent of a secondary sense. Therefore the text in question is relative alone to the son of the body: for conception and so forth are the subjects treated on, and it is declaratory of the same effect as this and other texts: "Beyond the fifth and seventh degree, &c."

29. Neither can the objection specified be alleged,—viz. that, if the text regard the real legitimate son, it would follow that a bridegroom the eighth from the common ancestor, and a bride the sixth, might not intermarry, on account of her non-connection to his father as sapiṇḍa being wanting. For that is no real objection from its being founded on a mistake of the ablative case, (pituḥ) for the genitive [inflected the same]. Accordingly, in this sentence "mátṛitaḥ-patṛitas-tathá" ('on the mother's side and father's side, respectively')—the grammatical affix 'tasil' conclusive of the case being the ablative, is used by the chief of saints.

(1) Gautama, iv. 3, 4 and 5. (2) Manu, v. 60.

Should a doubt arise from this affix also being used as the inflection of every [oblique] case,—the ablative is rendered certain by this text of Gautama,—"With the kinsmen on the side of the father, (pitṛi-bandhubhyaḥ) (viz. of the procreator,) beyond the seventh degree, and with those on the mother's side (mâtṛi-bandhubhyaḥ) beyond the fifth, &c." Thus, that noticed is not any satisfactory reply; another must be declared.

30. This others have propounded—"Sages declare these eleven sons (the son of the wife and the rest,) as specified to be substitutes for a son; for the obsequies would fail."(1) Since in this text, the son of the wife and the rest are declared to be substitutes for the real son: by the maxim of logic,—'the substitute possesses his virtue,—the whole virtue of the legitimate son being inferred in them, the exception [from marriage with them] of a female sapiṇḍa of the adoptive father must follow.'

31. This is not accurate: for, as representation of the relation of sapiṇḍa forbidden by this passage—"the relation of sapiṇḍa is not included"—would be impossible: that not being obtained, the exception of such female could not take place. Hence it is disproved that the exception [from marriage] of the female sapiṇḍa of the adoptive father is established from the representation of the virtue of the real legitimate son [existing in the substitute] by reason of the name of 'son.' For, analogous to the case exemplified in the passage,—"an animal being the object he performs not these two [rites,]"—the representation of the relation of sapiṇḍa which is forbidden being impossible, the exception could not subsist.

32. Therefore, not being otherwise inferrible, the relation of 'sapiṇḍa' in the peculiar family (kula) of the adopter as founded only on express texts of law must be admitted. This is declared. Relation of sapiṇḍa is of two descriptions;—through consanguinity and through connection by a funeral oblation. Of these the relation as sapiṇḍa arising from consanguinity, being obviously barred in the case of the adopted son,—Hemádri, (after having declared that relation as arising alone from connection by a funeral oblation and consanguinity,) has determined the relation of sapiṇḍa of sons given, and the rest in the family of the adoptive father as extending only to the third degree.

33. And so also Kárshṇájini—"As many as there may be degrees of forefathers: with so many of their own forefathers, let sons given and the rest associate the deceased in order; their sons with two forefathers, their grandsons with one. This is general: the fourth degree is excluded: therefore this is [a relation of sapiṇḍa] extending to three degrees."

34. This is the meaning of the text.—According as the deceased adoptive fathers may be sons legitimate, adopted absolutely or of two fathers; as many as there may be degrees of fore-

(1) Manu, ix. 180.

fathers,—three or six;—(that is, in the first of these cases, three,—viz., the natural father, grandfather and great-grandfather [of the deceased],—in the second, three—viz., the adoptive father, grandfather and great-grandfather,—in the third three;—the adoptive father and other two,—and three,—the natural father and other two,—) with so many not exceeding six [as the case may be], let sons given and the rest associate their adoptive fathers.

35. The epithet "their own" is used for the purpose of suggesting that all these as many as three or six (as the case may be) who are forefathers of the adoptive father are divine objects, contemplated in the ceremony of 'sapiṇḍi-karaṇa' performed for the adopted son, by his own son. And hence it being deduced, that the forefathers of the adopter are in fact divine objects in the ceremony of 'sapiṇḍi-karaṇa' performed for the adopted son, the author propounds a distinction; "In order their sons with two [forefathers]"—that is, with two of three and four of six.—On this principle let the grandsons of the adopted son perform the 'sapiṇḍi-karaṇa' for their own father, with one (the father of the adopter, from amongst three forefathers of the adopter of their own grandfather: or in the case of [such adopter] being sons of two fathers, with both grandfathers of their own grandfathers. The author points out this rule in respect to the adopted son and his issue likewise.

36. 'This is general:'—that is, this ceremony of 'sapiṇḍi-karaṇa,' where the adopted son and his son also are sons of two fathers must be equally performed [by their descendants] with both sets of forefathers.

37. But if this is the case: the 'sapiṇḍi-karaṇa' for his own father, the grandson of the adopted son, being performed by the great-grandson of that person, with these three,—the son of the adopted, the adopted, and the adopter,—no alliance by a funeral oblation with the three forefathers of the adopter would exist; as not one of them even is included. Accordingly, the author adds,—"the fourth degree is excluded." The meaning is,—when any person may perform for his own father the 'sapiṇḍi-karaṇa,' he should do it with three, the father and other two ancestors of the deceased, not with the fourth.

38. But in the instance of the real legitimate son is not thus the performance of the sapiṇḍi-karaṇa [for his father] with three forefathers only established by holy writ? Being established then by this alone, for what purpose is the inconvenience of introducing another express text [to declare it]? Anticipating this objection the author subjoins: "Therefore the sapiṇḍa relationship of adopted sons is one extending only to the third degree being productive of uncleanness and disability of marriage, and consisting in connection by funeral oblations." It is not such relation including the seventh degree, declared in the subjoined passage from the Matsya-puráṇa: for this being of a general nature is excepted by the special rule [in the case in point]—"The fourth in degree

and the rest are partakers of the wipings [of the oblations]. The father and the rest are participants of the oblation. The seventh in descent is the giver of the oblation. Of these the relation of sapiṇḍa extends to the seventh degree."

39. Intending merely this, it is said by the author of the Sangraha: "The relation as sapiṇḍa of adopted sons, extends to three degrees in the family of the natural father: and like that, in the family of the adopter. This is a rule of law." The mention here of relation as sapiṇḍa in both families, is with reference to the son of two fathers, for it has been shewn that the ceremony of 'sapiṇḍi-karaṇa' for such son is performed with two sets of three forefathers. Of the absolutely adopted son, the relation of sapiṇḍa in the family of the adopter, consisting in connection by funeral oblation, extends to three degrees: in the family of the natural father, arising only from consanguinity, it extends to seven degrees. To enlarge would be useless.

40. "Like this, the general family."] 'Like this,'—analogous to the relationship as sapiṇḍa in the general family likewise [of sons given and the rest,] is that of the natural father who contributes the seed; not only of the natural father, however, but also of the adopter. The general family of sons given and the rest, is that of him also who is the adopter of such son given and so forth. By this the relation of sapiṇḍa is shewn to vary from the general family. Thus, that relationship is in the line of the natural father only, not so the general family; on the contrary, this is that of both [fathers] even. This likewise does not apply to the general adopted son: but is relative to the son of two fathers, a particular adopted son.

41. Accordingly, sons given and the rest, [who are sons of two fathers,] are of two descriptions: Those absolutely sons of two fathers, and those incompletely so. Of these, those are named absolute 'dvyámushyáyaṇas' who are given in adoption with this stipulation,—'this is son of us two' (the natural father and the adopter). The incomplete 'dvyámushyáyaṇas' are those who are initiated by their natural father in ceremonies ending with that of tonsure, and by the adoptive father in those commencing with the investiture of the characteristic thread, since they are initiated under family names of both even; they are sons of two fathers but incompletely so. Should a child directly on being born be adopted, as his initiation under both family names would be wanting, he would partake only of the family of the adopter.

42. Intending all this, Satyáshádha says,—"of absolute 'dvyámushyáyaṇas' of both, &c." By this compendious rule, having declared the connection of absolute dvyámushyáyaṇas to the patriarchal saints in both families, the author by another aphorism commencing,—"Of sons given and the rest like the dvyámushyáyaṇa, &c."—ordains the same connection with respect to those incomplete dvyámushyáyaṇas. Now this is thus explained by Sabarasvámí. "Treating of dvyámushyáyaṇas" the author

mentions those incompletely so, "Of sons given, &c." Unto those only, not to issue beyond, [does the connection to both families extend]. By the first only the initiatory rites [ending with tonsure are performed]. If by the adopter [the family of the adopted] in that of the latter: on account of priority. From this alone [the same is the case] in respect to a descendant beyond. So also those who are affiliated by a descendant of the same general family (as, for instance, a nephew by an uncle), are of the adopter's family only.

43. The meaning of this commentary is this.—He only is connected to both families who has been initiated under both family names; not descendants beyond. In reply to the question, as to the cause of connection to the family of the natural father, the author says "By the first, &c." 'The first';—that is, the natural father: [the cause is,—] on account of the initiatory rites being performed by him only.—Now the initiatory rites, [alluded to,] are those ending with tonsure: on account of this passage from the Káliká-puráṇa, "Oh, Lord of the earth, a son having been regularly initiated under the family name of his [natural] father, unto the ceremony of tonsure inclusive, does not become the son of another man."(1) This has been already explained. He does not become exclusively the son of another: but is a dvyámushyáyaṇa, or son of two fathers.

44. Anticipating a question, as to what would be the case were the initiation performed by the first, the author adds,—"If by the adopter, &c." If every initiatory rite from that on birth, or even those commencing with tonsure, be performed by the adopter only, the family [of the adopted] is of the latter,—that is,—of the adopter only. For this, a reason is subjoined:—"on account of priority"—meaning,—from precedence in the performance of initiation.

45. The author declares the family (required to be known), in the instance of the issue of the dvyámushyáyaṇa, and that of the [absolutely] adopted son:—"from this alone"—from the initiation taking place under the family name only of the adopter in both instances, even his is the family of the descendants beyond.

46. The author alludes to the adoption of one belonging to the same general family,—"so also, &c." That is,—if the natural and adoptive fathers belong even to the same general family, the distinctive appellations are fixed by the adopter only for the adoption, and initiation is performed by him.

47. The text ("A given son must never claim the family and estate of his natural father, &c.") must be considered applicable to the case where every initiatory rite, from that of birth, is performed by the adopter only: but the son given, and the rest who are absolute dvyámushyáyaṇas, belong to both families; on account of this passage of Párijáta;—"Sons given, purchased and the rest,

(1) II. Cole. Dig., 329, clxxxii.

who are sons of two fathers, may not marry in either family even: as was the case of Sringa and Saisira." 'In either family'—in the family of the natural father and in that of the adopter.

48. With respect to the sons given, and the rest, being sons of two fathers, this text and that of Satyáshádha, commencing ("of absolute dvyámushyáyaṇas"), are authority. With the same intent it is declared also in the Pravara-manjari: "For the most part sons given, purchased and made, the son of the appointed daughter, and so forth, belong to both general families with connection to the patriarchal saints of each." From this alone on the occasion of the marriage of those appertaining to two families, both families with each of which their connection to the patriarchal saints is involved, must be avoided.

49. The sákhá or peculiar branch of the Vedas is that of the adopter only. Vasishṭha declares so:—"Sprung from one following a different sákhá (or branch of the Vedas) the given son even when invested with the characteristic thread, under the family name of [the man] himself, according to the form prescribed by his peculiar sákhá, becomes participant of the duties of such sákhá; (sva-sákhá-bhák)."(1) That duty in which his peculiar (that is the adopter's) sákhá prevails, is a duty of such sákhá; in this he shares or "is participant, &c." Such rite only which is prescribed by the sákhá of the adopted must be performed by him. This is the meaning.

50. The forefathers of the adoptive mother only are also the maternal grandsires of sons given, and the rest: for the rule regarding the paternal is equally applicable to the maternal grandsires [of adopted sons].

51. As for what is said by Hemádri that the precept enjoining the performance of a sráddha in honour of the maternal grandfather, refers to the natural maternal grandfather; that is inaccurate, for it is at variance with the passage—"of him who has given away his son the obsequies fail." Nor is the capacity of the maternal grandsires as givers wanting: for by reason of their affording their assent to the gift (as appears from this passage—"having convened his kindred, &c.")—they also are parties to the same. Besides, by this passage—"the funeral cake follows the family and estate,"(2) —the family and estate are declared to be the cause of performing the sráddha; and the estate of the maternal grandfather also like that of the father lapses from the son given. His incapacity to perform a sráddha in honour of his original maternal grandfather is properly declared.

52. Accordingly, Hemádri himself, from not being satisfied with that just stated, has advanced the other position: "In the same manner as for the secondary father, a sráddha must be performed in honour of the secondary maternal grandfather and the rest."

(1) Not found.

(2) Manu, ix. 142.

53. And this even is proper. The adopted son as substitute for the real legitimate son, being the agent of rites performed by a legitimate son, it follows that he is the performer of sráddhas the objects of which are the manes in honour of whom a legitimate son performs them. For, without difference, relation to the father and other sires of the adopter obtains; in the same manner as relation to the general family, the sákhá, the family-deity and family-rules of that person:—the term 'son' is used without restriction in these and other passages;—"Fathers desire sons." "The son who shall go to Gaya, &c.":—and further: if the adoptive mother be espoused according to the forms of marriage of the Ásuras, and the rest, by reason of the father only of such acquired mother being the maternal grandfather to be contemplated in the ceremony of sapiṇḍí-karaṇa propounded in texts similar to the subjoined; it is proper that his manes should be consecrated in a separate sráddha. "At the close of the year by sons, the father must be associated with the paternal grandfather: the mother must be associated with the maternal grandfather. Thus saith the illustrious Yama."

54. Accordingly, sons given and the rest do not incur the guilt of a 'parivitri' and the like: for a text of Gautama recites;—"By marriage and the establishing a consecrated fire, the offence of 'parivedana' does not attach to a half-brother, a son given and the son of a paternal uncle likewise."(1)

55. 'To a half-brother.'] On the marriage and so forth of either of two brothers by different mothers, the sin denominated 'parivedana' is not incurred. This is the meaning. 'A son given'] It is meant,—that although there be an elder brother in the family of the natural father, the adopted son is not (should he marry and so forth,) a 'parivitri;' nor also by such previous marriage and the like of the younger, is the elder a 'parivitta' or person passively implicated in the criminal acts alluded to. 'The son of a paternal uncle.'] On the marriage and so forth of the 'kshetraja,' son of a brother begotten [on his wife] by her brother-in-law or on the same of the legitimate son of such brother-in-law, the guilt of being a parivitta, parivitri and the like is not incurred by such son of the brother-in-law or such 'kshetraja' son, respectively. This is the meaning.

56. 'The son of a paternal uncle' in the general sense of the terms is not meant: for one adopted is suggested by the expression 'a son given;' and by reason of there being no grounds for supposing an unadopted [nephew to be referred to] (as the prohibition [against previous marriage, and so forth,] does not apply to him,) there can be no rule for exempting him from the same.

57. Nor must it be argued that from the particular authority in question, the filial relation of a brother's son though unadopted is established; for this is obviated by the several objections before

(1) Not found.

stated: viz. where of ten brothers five were without male issue, and five had each ten sons, it would result that the brothers destitute of male offspring would severally have fifty sons; and it would follow that the fifty sons would each have ten fathers. Therefore the interpretation given is the only accurate one.

SECTION VII.

For the legitimate daughter there may be the different substitutes corresponding with those for the son.

1. As on default of the legitimate son, so on default of a legitimate daughter likewise, daughters of the wife and the rest are substitutes on account of the rule of logic, "on default of the principal, a substitute, &c." Now she is principal by reason of her being the means of completion in the precept enjoying gift and so forth. And a daughter produced according to the precept directing conjugal intercourse at due season is such means; in the same manner as rice and so forth acquired according to the rules of acquisition are the completive means of a sacrifice.

2. Accordingly, it appears from the argument exemplified in the instance of the sacrifice at night, that progeny (prajá) only deduced from Sruti and indifferently male or female is liable to be produced under the positive precept regarding connubial intercourse at due season contained in such passages as this commencing—"Let him approach in due season, &c."—and inferred from these and other confirmatory passages;—"We (women) obtain progeny from the approach of [our husbands] at due season."—"They obtain progeny from approach at due season."—For the etymology being thus; prajá, (progeny) from 'prajanayati' (one who procreates), by the word "prajá" a male or female being only possessing generative powers is intended; not one of the neuter gender: for such being produced from equality of the male and female seed is a monstrous production.

3. Therefore should no issue (santati), such as is contemplated in the passage following, be produced, descent to a region of horror is ordained.—"Not having read the Vedas: not having produced issue: and not having performed the various sacrifices, a regenerate man desiring absolution falls to a region of horror."

4. What prolongs lineage, is 'santati' (issue) a synonym of 'prajá' (offspring); for a passage of the kosha or vocabulary of Amara expresses: 'prajá' stands for 'santati' (issue) and 'jana' (people). Thus is explained the word 'apatya' (offspring) occurring in the passage subjoined: on account of a text of Yaska which states,—'apatyam' (offspring) that is, from whom three is exemption from falling into hell (apatana): or through age of the kosha—"The synonyms signifying 'son' are—átmajastanayaḥ-súnuḥ-sutaḥ-putraḥ: all these terms 'apatyam' and 'tokam' apply to the two sexes."

5. "For the sake of offspring (apatya) were women created: woman is the soil; men, the sowers of the seed: to one possessed of seed must the soil be given; but one destitute thereof deserves not the soil."(1)

6. "Here 'pumán (male) is 'purumán' (comprehending much): or its etymon is the root 'pums' (to cover, daub, &c.)." Although by this passage from Yaska, the word "pum" (male) signifies one knowing much;—still from this part of his passage in question—"or its etymon, is the root "pums" (to cover, &c.)"—it must be interpreted as signifying persons both male and female possessing the procreative faculty.

7. Accordingly, Yaska has shewn by the following passage that the term 'putra' there occurring signifies children of both sexes (mithuna). "That children male and female (mithuna) are heirs is declared by these two stanzas.—'From my several limbs, thou art distilled; from my heart, thou art produced. Thou art indeed self, but denominated son (putra): mayst thou live a hundred years.'—Manu descendant from the Self-existent hath declared at the commencement of the world,—without distinction that wealth is that of children (putra) male and female (mithuna)."

8. It must not be alleged that the term 'mithuna' in the above passage intends the son and daughter-in-law; for the text—"From my several limbs thou art distilled, &c."—would be impertinent; and the exclusion of the daughter from inheritance according to the doctrine of some, mentioned in this passage, would be incongruous. "Not daughter:—thus some. [But by me] the male is recognized as an heir: the female as an heiress."

9. As for the term 'putra' (son) used in this and similar texts: "Heaven awaits not one destitute of a son (putra)," that also even signifies both sexes. For it is declared by Páṇini in the following rule to be a complex expression (formed by the rejection of one term and retention of the other) denoting son and daughter. "The expressions 'bhrátṛi' (brother) and 'putra' (son) are severally inclusive of sister and daughter." By this is explained the term 'putra' (son) in such texts also as,—"By one destitute of a son, must a substitute for the same always be made, &c."

10. And, as conforming with this doctrine, the indication of the affiliation of a daughter will be subsequently declared.

11. Accordingly, it is said,—"Equal to him is the putriká-suta or daughter appointed to be son"(2)—"As a son so does the daughter of a man proceed from his several limbs,"(3)—and,—"If by the inauspiciousness of destiny, a daughter should not be born; then that must be propitiated by the observance of rites, such as sráddhas in honour of the deceased, on the first day of the dark fortnight; in the same manner as the destiny for a son, by sráddhas, and the like, on the fourth day of the same."

(1) Nárada, xii. 19. (2) Yájñavalkya, ii. 128
(3) Brihaspati, xxv. 56.

12. "Thus approaching let him beget a son." As for what is suggested by this, that a son only is the object proposed to be produced in an act, the only means for completing which is the approaching, that is a recital of 'son,' intended to shew the commencing act of one desirous of male issue; the author having first determined a son,—one of the male and female children alluded to by the term "progeny" (prajá),—to be the fruit of the essentials (guṇa) mentioned in the same passage.

13. And these essentials in this and other texts ("thus, &c.") are explained by the holy saint Manu and the rest to be,—on a night whose date is an even number, predominance of the virile seed; and passiveness of the woman:—the moon being in an auspicious mansion:—the ceremony, 'pumsavana,'—destiny and so forth.

14. It is explicitly propounded by Ásvaláyana also, that in marriage, a son and a daughter are the fruit of particular essentials.—"Let the man take the thumb of the woman repeating the portion of the Vedas—'I take your hand for your prosperity'—should he thus desire—'may my children be born males only'—[let him take] the fingers alone: if his desire be for female issue, the hand in the middle: if both be desired, the hand in the middle, including the thumb."

15. By this is explained the passage—"On the odd nights, daughters, &c."(1)

16. Therefore, in the same manner as the son by reason of being the means of procuring heaven as the agent in the performance of the sráddha and so forth, is principal; the daughter also being the same by reason of her being the means of accomplishing the precept enjoying gift, the sráddha, and so forth; on default of her, a substitute is proper.

17. "'Duhitá' (daughter)—that is—'dúra-hitá' or 'dúre-hitá' one remotely benefiting; [derived] like 'dogdhá' (a milker)." By this analysis Yaska shews that the daughter benefits her father by means of her son also. Manu likewise: "Now between the sons of his son and of his daughter there subsists in this world no difference: for even the son of a daughter delivers him in the next like the son of his son." And in the Mahábhárata this speech of Gándhári: "This one daughter born after one hundred sons shall be mature. Hence I shall obtain worlds acquired by a daughter's son.—This is my persuasion."—In another authority also: "Are daughters also real legitimate children of their father and mother? Formerly one falling, being upheld by a daughter's sons, did ascend to heaven."—'By a daughter's sons,'—by the sons of Mágchadhi of the description denominated 'kánína' through funeral rites performed on the eighth lunar day and the like.

18. Consequently on failure of the real legitimate daughter, for the sake of obtaining the heaven procured by the daughter's son, the constituting the kshetraja and other adoptive daughters

(1) Manu, iii. 48.

even substitutes is established. Nor is there any express passage of law as to there being a substitute for rice, [that it should be objected, that there is no express passage authorizing a substitute for a daughter.]

19. If this is the case, then, in the same manner as on the death of the husband, the brother-in-law is a substitute, so on the death of the wife the sister-in-law would be the same on account of her exact resemblance in point of consanguineal relation to the father-in-law, viz., her own father.

20. This objection if made is inaccurate. The designation of 'wife' is not in consequence of 'consanguineal relation to the father-in-law,' but from being the lawfully wedded spouse of the husband. Now, the sister-in law is not such: where such essential exists in younger wives, in that case one [according to the order of age] may be the substitute for the eldest. Accordingly, the chief of saints hath negatively declared this: "Another wife of equal class [with himself] existing, he should not cause a religious act to be performed [by one of inferior class]; amongst several wives equal in class except the eldest, no other officiates in a sacred rite." (1)

21. Therefore it is established by reasoning even that these may be substitutes. Of these from amongst the following five subsidiary daughters, viz., the daughter of the wife, that of hidden origin, the damsel's daughter, and that of the twice-married woman, Manu himself has propounded the production of the daughter of the wife;—"On failure of issue [by the husband] the desired offspring may be procreated either by his brother or some other sapiṇḍa on the wife who has been duly authorized." (2) It is meant by this that on failure of issue of both sexes, as offspring male or female is the object desired, [that begotten by a kinsman] is a substitute for either as the case may be.

22. As to the other four subsidiary daughters in question there is no necessity for an express rule for their production: for their existence proceeds from the inclination of individuals.

23. The names of these [subsidiary daughters], are only those adduced (v. § 21) corresponding with those of the sons: for the cause from which they proceed is the same even in respect to both.

24. And their being substitutes for the legitimate daughter is established from analogy even from their originating partially from portions [of the husband and wife]; in the same manner as wild rice (nívára), is shewn to be a substitute on defect of the cultivated rice which ripens in the rains (vríhi). Now, such portions are partial, because the connection being through portions of the wife only, relation through portions of the husband is wanting.

25. Allowing, however, that by force of analogy the daughter of the wife and other four secondary daughters are substitutes for

(1) Manu, ix. 87.

(2) Manu, ix. 59.

the legitimate daughter, how are a daughter given, one purchased, a daughter made, one self-given and a deserted daughter, (no analogy applying,) substitutes ?

26. This objection is invalid.—To these descriptions of daughters also analogy even does extend: since an exact resemblance exists through equality of class and so forth, as intimated by the saint—"This law is propounded by me in regard to sons (tanayeshu) equal by class";—and this passage was already explained in treating on the substitute for a son.

27. But admitting that the daughter of the wife and other four daughters from relation as containing portions of the mother —and the daughter and the other four from equality of class—are substitutes; still since there is no difference in their resemblance, how is the order [of succession] as provided for [in the case of sons] by this pasasge ("on failure of the preceding the next in order is heir, &c.,") to be applied ?

28. This objection is wrong: we reply,—by the greater worthiness of each successively. This Vishnu declares—"Among these the preceding successively is the more worthy."(1) Now worthiness is distinguished into what is temporal (drishta) and what is spiritual (adrishta). That which is temporal proceeds from relationship through consanguinity and the like: that which is spiritual from being purified and so forth. And the text in question intends a restrictive rule: in the same manner as such texts, as—"Should he not procure the 'Soma' creeper let him even admit the 'putika' plant, &c."

29. Further particulars may be consulted in the Kesava-Vaijayanti, my commentary on Vishnu.

30. Instances indicating the substitute for a daughter are found in the Puránas. Amongst these the recital to Dasaratha by Sumantra of the prophecy foretold by Sanatkumara in the Bálakánda of the Rámáyana is an indication of a daughter given.—"In the race of Ikshvákú one very meritorious shall be born: by name the warrior Dasaratha: illustrious and constant in truth. Great friendship shall subsist between him and the magnanimous king of Anga; and he shall possess a daughter of exalted destiny of the name of Sántá. But the king of Anga (called Lomápada) will be destitute of issue. That monarch shall entreat the king Dasaratha thus:—'I am destitute of offspring. Oh! versed in morality, let this girl Sántá of excessive beauty, with open heart be given me, for the sake of offspring.'—Then, that Rájá Dasaratha deliberating in his mind shall give the girl Sántá to the sovereign of Anga. That king, having taken the damsel, (his desires being fulfilled,) with gladness of heart will quickly go to his capital. That potentate shall bestow the damsel on Rishya-sringa, &c.' There also is this address of Dasaratha to Lomapáda, "Let your daughter Sántá, Oh warrior king! go with her husband to my city—an affair of

(1) Vishnu, xv. 28.

importance has arisen." There is likewise the address of Lomapáda to Rishya-sringa;—"This king Dasaratha is my amiable beloved friend. For the sake of offspring for me, this beautiful girl was given by him to me who demanded her: O Bráhmin, Sántá is most dear to me; as myself, oh! sage, he, this king, is thy father-in-law."

31. In these quotations from the expressions,—"let be given"—"shall be given"—"having taken"—and "given"—a rule for the gift is manifest. So it being premised, [that the king of Anga will be] destitute of issue, it follows from the conclusion of his prayer ("for the sake of offspring") that the daughter given, resembling the legitimate daughter, is a substitute for issue.

32. An indication of the daughter purchased is found in Hemádri from the Skanda-purána: "One even of a different family, having, through gold, made the daughter of another his own, is capable of bestowing her [in marriage], according to legal form." Also in the Linga-purána—"After having conferred with the parents, having made his own a damsel, perfect and free from every defect: by the gift of great wealth, having brought her [to his house]: having presented her with new clothes of good quality: having adorned her with ornaments, let him honour her with scented necklaces. He is first well to consider causes, their respective families, constellations and so forth: he is to study their respective dispositions and after having liberally gratified both, she is to be given by him to a Bráhmin only who is conversant with scripture, a practiser of devotion, one who hath well read the Vedas, and a student of theology."

33. In these quotations, from the expressions—"having through gold made his own"—"by the gift of wealth, &c."—authority for the purchase [of a daughter] is manifest.

34. An indication of the daughter made is found in the Harivamsa, where the offspring of Sura is enumerated. [The author] having thus premised,—"Ten males were begotten by Sura on the chief queen, the daughter of Bhoja, viz.—first Vasudeva, the long-armed, surnamed Ánaka-Dundubhi &c."—then continuing,—"Next to him Deva-Bhága was born; then Deva-Sravá́ḥ; then Anávrishti, Kanavaka and Vatsaván: after these Grinjima, Syáma, Samíka, Gandúsha—and of him were five daughters;"—and having thus enumerated the five—"Pṛithu-kírti, Pṛithá, and also Srutadevá, Sruta-sravá, Rájádhideví, likewise. These five were mothers of warriors,"—subjoins—"Kunti made Pṛithá his daughter: Páṇdu married her: on whom was procreated by the god of Justice the king Yudhishtira well versed in morality."

35. In this quotation since by the verb 'made,' the act of an agent even is shewn: the female [the object] is a daughter made [kṛitrimá].

36. Also in the Padma-purána, in the part treating on the Bhauma-vrata or fast in honour of the planet Mars: "Formerly

there was Sunandika, a Bráhmin thoroughly read in the Vedas: his wife Sunandiká was barren; but extremely anxious [for issue]. No offspring was born to him: from continuing barren, [premature] old age came on. Himself having taken her [in adoption],—Susílá, who was the child of another, beautiful in form and born in the family of a Bráhmin, was educated by him: and that Bráhmiṇí also cherished her in her house as her daughter: and she was given in marriage to the Bráhmin Somesvara who then, according to the form declared in the Vedas, married her, &c., &c."

37. Here the specification of "himself having taken" indicates an instance of a daughter made: and the construction "was educated by himself" is not accurate: for as the agent to the verbs 'taking' and 'educating' is the same, as shewn by the past participle 'having taken', it is established that the act of educating is by himself.

38. An indication of the daughter self-given must be searched for in the other Puránas: One, the daughter deserted, occurs in this passage from the first Parva of the Mahábhárata, reciting the conversation between Dushyanta and Sakuntalá. Visvámitra begot Sakuntalá on Menaká. Menaká having deserted that infant born on the bank of the Máliní river, on the delightful table-land of Himavat, after having performed the necessary rites at that river, repaired thence quickly to the assembly of Indra. The birds having seen that infant sleeping in the forest uninhabited by men and abounding in lions and tigers surrounded it on all sides with a view that the voracious devourers of flesh might not hurt the child. The birds then guarded on all sides there the daughter of Menaká; and I going to sip water saw her sleeping surrounded in the beautiful uninhabited forest by birds. Having brought her thence I adopted her as my daughter. The maker of the body, the bestower of life, and he whose food is eaten, these three in order are declared to be fathers in holy ordinance. Since she was surrounded in the desert forest by birds, her name also was in consequence fixed by me Sakuntalá. Thus recognize, "Oh! Bráhmin, my daughter Sakuntalá." Sakuntalá said: "Being asked, this he declared to the great saint to be my birth. Do you, oh Lord of men, regard me as the daughter of Kanva, I consider Kanva as my father: I know not my real father."

39. Here, from the use of the expression—"having deserted"—authority for the deserted or discarded daughter is obvious. Hence, it is easy to establish authority for each by instances appropriate to each respectively. It is useless to enlarge.

SECTION VIII

On the mourning, and so forth, of, or for, the adopted son.

1. Next uncleanness [on occasions of birth and death] in respect to the adopted son, is determined. That is not reciprocal, in the family of the natural father, on account of the text of Manu: "A given son must never claim the family and the estate of his natural father. The funeral oblation follows the family and estate: but of him who has given away his son the obsequies fail."(1)

2. The terms 'funeral oblation' and 'obsequies' in this text are inclusive of every observance in honour of manes, uncleanness, and so forth; for the exclusion of the family and estate, which are the cause of presenting the funeral oblation, and so forth, is mentioned: and it is a restrictive condition that uncleanness which is spiritual, precede the presenting the funeral oblation, and so forth, in honour of the dead.

3. And hence, the funeral oblation being barred, the exclusion of uncleanness is even implied; for by well considering such passages as the following the concomitancy of the funeral oblation and uncleanness appears.—"Whether one of the same family, or one not belonging to the family; whether a male or a female; whoever, on the first day, presents the funeral cake should complete the rites till the tenth: and so also, it is not well for those who previously receive anything from the performer of these rites."—"Whilst the uncleanness lasts, a libation of water, and one funeral cake,"(2)—therefore, there is no reciprocal uncleanness, and the like, between the adopted son and his natural father, and the rest.

4. As for the text,—"Impurity (agham) arising from seminal connection also continues three days"(3)—that is overruled by this passage: "But of him who has given away his son the obsequies fail": for it applies to instances other than that of the adopted son. Besides, since it appears that family and alliance by oblation of food are collectively the cause of impurity, the libation of water, and so forth; should one of these essentials be wanting, impurity and the rest, occasioned (partly) by it, does not exist.

5. Accordingly, Sankha and Likhita: "The connection as sapiṇḍa from family must be recognized as extending to the seventh degree: and the funeral cake, and the gift of water, purity and impurity, are consequent on it."(4)

6. On the death of the son given, and the rest, the uncleanness of the adoptive father, and others, endures for three nights.

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(1) Manu, ix. 142.
(2) Vishṇu, xix. 13.
(3) Not found.
(4) Not found.

This Brihaspati declares:—"Wives, having taken to other men, and children by the wife of another, being dead: the best of the regenerate, having bathed, are purified."(1) And this rule for uncleanness applies to him only to whom the relation of wife or son refers.

7. Maríchi separately propounds [the uncleanness] of sapiṇḍas of the father, connected within the third degree. "On occasions of birth and death likewise, [the period of impurity,] for the first and second [husband,] is three nights: where the impurity of the father endures three nights, that of the sapiṇḍas lasts one day."

8. Although no impurity of the adopter, by acceptance of sons given and the rest, (who are already born,) as arising from their birth obtains: still uncleanness is incurred from the birth of their offspring. But on account of the birth of the son of the twice-married woman, in his own house, uncleanness on that occasion is fit. Thus is impurity from birth shewn.

9. This, however, regards sons of equal class only. Accordingly the Bráhma-puráṇa;—"Excepting the legitimate son, on the death and birth of the son of the wife, and the rest, always in every class, the impurity of those equal by class, endures three nights.—This is a settled point."

10. 'Always'—that is—at any time subsequent to investiture of the characteristic thread.

11. [Prajápati also]: "Wives having taken to another, and children by the wife of another, [being dead]: those of the same general family are purified by ablution: after three days at least, one versed in the divine truth."

12. Although, [it may be alleged, that] on the death of the adopter, the uncleanness of the adopted son, for ten days, is not fit, since the [general] relation of sapiṇḍa and connection by identity of family, associated together, are wanting [in him]; and no special rule in that respect is at present found: still, by the following passage of Maríchi, uncleanness for ten days is propounded for the purpose of the disciple's performing the necessary rites in honour of his deceased 'Guru.' "The disciple of a deceased 'Guru,' performing uninterruptedly for ten days, with food for manes, the obsequies for a father, is purified".

13. Here the term 'Guru' represents the preceptor and other superior; and such venerable superiority obtains in the individual in question [the adopter], on account of his performing the rite of investiture, and so forth.—Therefore, in case of the adopter having performed the initiatory rites of the adopted, the impurity of the latter endures for ten days; if this be not the case, for three nights only: on account of the text before cited.—(§ 9).

(1) Not found.

14. So on the death of a sapiṇḍa of the adopter, related within the third degree, the uncleanness of the adopted son is for one day: for the text in question of Maríchi recites,—"that of the sapiṇḍas for one day."

15. On the death of one connected by an oblation of water, and one belonging to the same general family, ablution only is necessary on account of the text of Prajápati, before cited (v. § 2.) "Wives having taken to another, and children by the wife of another being dead, those of the same general family are purified by ablution, &c."

SECTION IX.

On the funeral obsequies to be performed by the adopted son.

1. Next the funeral rites, performed by the adopted son, are described. On this subject, Játúkarṇa says:—"Annually let the son of the wife, and legitimate son perform [obsequies] according to the párvana form: the other ten sons should perform the rite dedicated to a single ancestor."

2. 'Annually'—from this general mode of expression, although the monthly (amávásya) and other periodical sráddhas be inferrible, that only on the anniversary of the day of death is meant. For the words—"the anniversary of the day of death"—are expressly used in this text of Parásara. "[Sráddha] by the legitimate son, for a father who has departed this life, on all occasions is in honour of three ancestors; but that by those of a different general family (aneka-gotra), is the rite consecrated to a single person on the anniversary of the day of death."

3. The expression—'those of a different general family' (aneka-gotra)—in this text does not intend the maternal grandfather, and the rest: for its construction as intending a secondary son, as contrasted with the legitimate son, is proper,—from its proximity in the same sentence with the terms 'father' and 'legitimate son': for otherwise [no contradistinction between the legitimate and secondary sons being meant,] if the meaning intended be conveyed by merely declaring that, [a sráddha] in honour of three ancestors must be performed by the son on the anniversary of the day of the father's death, it would follow that the specification of the term 'legitimate' were impertinent.—Nor is there any restrictive rule that on the anniversary of the day of death, merely the rite consecrated to a single person takes place for the maternal grandfather and the rest.

4. Accordingly, Maríchi says:—"Commencing with the father of the mother, three are considered maternal grandsires. Let the sons of daughters perform for these funeral oblations as for the father."

5. By ordaining, in this text, funeral oblations in honour of three maternal grandsires, the párvana or double rite only is

inferred. From the expression "as for the father," an option of performing, for the maternal grandsires also, obsequies in the form of párvana, or ekoddishta, is not obtained; for the sentence in question is meant to enjoin the absolute necessity for the performance of obsequies in honour of the maternal grandfather.

6. Besides, why should not also the term 'yearly' in the following text, like the word 'annually' [in Játúkarṇa's text (§1.)] —[supposing this word, there occurring, to have such import,] intend the magha, and other periodical sráddhas, "Excepting the first sixteen sráddhas, with rites performed with fire included, —and the yearly obsequies,—at the remaining sráddhas let six cakes be presented: this is a settled rule."

7. Should it be objected that this would be an intended consequence, it is wrong, for it would follow that the son given and the rest, at the different periodical sráddhas would perform an ekoddishta rite. Now this is not meant by any one. For if the term comprehend any sráddhas in general, other sráddhas (as must be understood from the term 'remaining'), not existing, any exception would be impossible.

8. Therefore this is the accurate exposition of the law,—that on the anniversary of the day of death, in honour of the father and the mother, a párvana sráddha only should be performed by the legitimate son: by the other (the son given and the rest), merely one consecrated to a single ancestor. To enlarge would be useless.

SECTION X.

On the succession of the adopted son.

1. The inheritance of the adopted son is now propounded.—On that subject Vasishṭha says:—"When a son has been adopted, if a legitimate son be afterwards born, the given son shares a fourth part."(1)(a) In default of him he is entitled to the whole.

2. Thus is the Dattaka-Mímámsá, compiled by the fortunate Nanda Pandita, the son of the fortunate Ráma Pandita, Dharmádhikári, completed.

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(1) Vasishtha, xv. 9.

(a) This text has been variously interpreted in the various High Courts, and the share of the adopted son therefore varies in the different Presidencies. In Bengal the adopted son gets a fourth of the whole estate. In Bombay and Madras the adopted son gets a fifth of the whole estate, the subsequently born aurasa son getting the remaining four-fifths (see *Taramohun* v. *Kripa Moyee*, 1 Suth. 423; *Ayyavu* v. *Miladatchi*, 1 Mad. H. C. 46.)

DATTAKA-CHANDRIKA.

A TREATISE ON ADOPTION.

BY DEVANDA-BHATTA.

SECTION I.

Reason of adoption—Who may adopt—What description of son—How to be selected—Preference to be given to a brother's son—The gift by whom to be made.

1. By the favour of Chandrikála, the Dattaka-Chandriká, the dispeller of the doubt arising from what was not propounded in the Chandriká, is compiled.

2. The whole body of law relative to the adopted son, ordained for the Kali age, which was not discussed by me in the Chandriká, in treating of the eighteen topics of litigation, propounded in the texts of Manu, and others, is fully and specially expounded here.

3. On this subject Manu says: "A son of any description must be anxiously adopted by a man destitute of male issue, for the sake of the funeral cake, water and solemn rites; and for the celebrity of his name."(1) Atri: "By a man destitute of male issue only must the substitute for a son of some one description always be anxiously made for the sake of the funeral cake, water and solemn rites."(2)

4. "By a man destitute of male issue:" that is, by one to whom no son may have been born: or whose son may have died; for a text of Saunaka states: "One destitute of a son, or one whose son may have died, having fasted for male issue."

5. Therefore, although by the birth of a son the exemption from debt, deduced from the text of Manu subjoined, may have taken place, still on the death of such son, for the sake of funeral rites the affiliation of another son is indispensable. "By the eldest, at the moment of birth a man becomes father of male issue, and is absolved also from debt to his progenitors. He, therefore, is entitled to take the estate."(3)

6. The term 'male issue' (putra) here used includes by implication the grandson, and great-grandson; for these equally with the son present oblations of food and preserve the line. Otherwise it would follow that there might be an unnecessary adoption. It, therefore, results that only one destitute of a grandson and great-grandson may adopt.

(1) Not found. (2) II. Cole. Dig., 421, cccxii.
(3) Manu, ix. 106.

7. It must not be argued, that from the qualities of being male and singular, being attributed to the adopter, by the expression "a man destitute of male issue," any limitation is imposed to the effect that the same person must not be adopted by two individuals nor any son by women. For the adoption of the Dvyámushyáyaṇa or son of two fathers by two persons will be presently declared; [and] women with the sanction of their husbands are competent to adopt as Vasishtha shews: "Let not a woman either give or receive a son in adoption, unless with the assent of her husband."(1)

8. "A substitute." He is of eleven descriptions, the son of the wife and the rest. Thus Manu [ordains]: "Sages declare these eleven sons (the son of the wife and the rest) as specified by sages to be substitutes for the real legitimate son for the sake of preventing a failure of obsequies."(2) Brihaspati also: "Of the thirteen sons who have been enumerated by Manu in their order, the legitimate son and appointed daughter are the cause of lineage. As oil is substituted by the virtuous for ghee, so are eleven sons by affiliation substituted for the legitimate son and appointed daughter."(3)

9. Of these, however, in the presentage, all are not recognized. For a text recites:—"Sons of many descriptions who were made by ancient saints cannot now be made by men,—by reason of their deficiency of power;"(4) and against those other than the son given, being substitutes, there is a prohibition in a passage of law wherein after having been premised:—"The recognition, as sons of those other than the legitimate son and son given,"—it is subjoined—"These practices sages pronounce to be forbidden in the Kali age."(5)

10. The rules relative to the adopted son are now propounded. On this subject Saunaka ordains:—"The adoption of a son by any Bráhmin must be made from amongst sapiṇḍas or kinsmen connected by an oblation of food: or on failure of these, an 'asapiṇḍa' or one not so connected; otherwise let him not adopt."

11. Here since it is mentioned generally, from amongst 'sapiṇḍas,' it is meant from such both of the same or a different gotra; and, accordingly, on default of a 'sapiṇḍa' kinsman, one belonging to the same gotra and failing this latter, a person even of a different gotra is to be adopted. Sákala declares this: "Let one of a regenerate class destitute of male issue on that account adopt as a son the offspring of a 'sapiṇḍa' relation particularly: or also next to him one born in the same gotra. If such exist not, let him adopt one born in another gotra: except a daughter's son, and a sister's son, and the son of the mother's sister."

12. "Otherwise let him not adopt." By this is prohibited the adoption of one not a Bráhmin, that is, of a Kshatriyá, &c., who

(1) Vasishṭha, xv. 5.
(2) Manu, ix. 180.
(3) Brihaspati, xxv. 33.
(4) *Ibid*, xxiv. 14.
(5) II. Cole. Dig., 406, cclxxx.

does not belong to the same caste. Thus Manu declares: "He is called a son given who is alike and affectionately disposed and whom his father or mother gives as a son in a time of distress, confirming the gift with water."(1)

13. "In a time of distress"] the adopter being destitute of male issue. "Alike"] belonging to the same class.

14. "Alike" not by class, but by qualities suitable to the family. Accordingly, a Kshatriyá, or a person of any other inferior class, may be the adopted son of a Bráhmin. As for this interpretation by Medhátithi, it is thus reconciled. Where there may be no real legitimate son, although as being inferior in class, the Kshatriyá and the rest are not entitled to present the oblation of food and water; still their filial relation may be legally established by reason of their being beneficial in perpetuating the name and the like; but as they are beneficial only in a small degree they only receive maintenance.

15. Kátyáyana declares this: "If they be of a different class they are entitled to food and raiment only."(2) Saunaka also: "If one of a different class should, however, in any case have been adopted as a son, he should not make him the participator of a share: this is the doctrine of Saunaka also."—By Yájñavalkya also it is declared that one of the same class presents the funeral cake and participates in a share: but the filial relation of one of a different class is not denied;—and Vriddha Yájñavalkya explicitly declares this: "A person of the same class must be adopted as a son. Such a son performs the oblations and takes the estate; in default of him, one different in class, who is regarded merely as prolonging the line. He receives food and raiment only from the person succeeding to the estate."

16 In fact, the construction of the word 'alike' (sadrisa) in Manu's text (§ 12), as signifying 'of the same class' is only proper; for elsewhere the right of partition as an heir of such adopted son is shewn: and the participating in the inheritance of one unequal in class is impossible.

17. "Except a daughter's son and a sister's son."(a) This prohibition against the daughter's son and sister's son refers to those other than Súdrás. Accordingly Saunaka: "Of Kshatriyás in their own class positively, or [in default of a sapiṇḍa kinsman] at least in the same general family as that of the spiritual guide (Guru). Of Vaisyás, from amongst those of the Vaisyá class: of Súdrás from amongst those of the Súdrá class: of all classes likewise in [their own] classes only and not otherwise. But a daughter's son and a sister's son are affiliated by Súdrás. For the three superior classes, a sister's son is nowhere [mentioned as] a son."

18. Since there are no distinct and peculiar gotras of [primitive] Kshatriyás, 'at least in the same general family as that

(1) Manu, ix. 168. (2) II. Cole. Dig., 439, cccxxxvi.
(a) *Vide* note (a), p. 376.

of the spiritual guide' is specified; for it is declared in the passage subjoined, that one of the castes in question belongs to such general family. "He specified the gotras of the Guru for Kshatriyás and Vaisyás."

19. "In [their own] classes only, not otherwise." This is a restriction intended to forbid the adoption of one of a different class; otherwise the text of Kátyáyana before cited would be contradicted.

20. In respect, however, of the subject [it is to be observed that] where a brother's son may exist amongst near kinsmen, he only is to be adopted. This Manu ordains: "If one among brothers of the whole blood be possessed of male issue, Manu pronounces that they all are fathers by means of that son."(1) Brihaspati [also]: "If there are several brothers, the sons of one man by the same mother, on a son being born to one even of them, all of them are declared to be fathers of male issue."(2) Under these two texts, if a brother's son is in any manner capable of being a substitute, it is inferred that another is not to be adopted.

21. "Offspring must be produced: this precept is peremptory: in some manner or another it must be complied with." Since the representation of the filial relation here [contemplated] obtains in the brother's son; the effects thereof, viz., the offering of the funeral cake, libation of water and the like, and exemption from exclusion from heaven would be accomplished [by his existence]: hence there can be no reason to attain the same object otherwise; consequently a brother's son though unadopted is filially related; in conformity with this text of Brihat Parásara: "Let the nephew of a paternal uncle destitute of male issue be his son; he only should perform his obsequies and offer oblations of food and of water." Hence, a brother's son existing, no affiliation [of him or another], as a son given, and so forth, takes place.

22. This argument is unsound: for although, by reason of the nephew's possessing the elements of the filial relation, he may be the means of procuring exemption from exclusion from heaven and so forth: still, as the celebration of name and the due perpetuation of lineage would not be attained,—for the sake of the same, the constituting him [an adopted son,] is indispensable. Besides the two texts in question do not prohibit, where a brother's son may exist, the constituting [him or another] a son given and so forth: but indicate [as inherent in a nephew] the virtue of a son consisting in the capacity to perform the sráddha and so forth.—For otherwise the existence of the rule for the production of a kshetraja son, notwithstanding a brother's son would be contradicted and since by the text subjoined, the resemblance of a son's son obtains in a daughter's son, according to the reasoning followed, the non-adoption of a son given, and the rest where a daughter's son also might exist would result. "By that male child, whom a

(1) Manu, ix. 182.

(2) Brihaspati, xxv. 99.

daughter, whether formally appointed or not, shall produce from a husband of equal class, the maternal grandfather becomes the grandsire of a son's son: let him give the funeral oblation, and take the inheritance."(1)

23. But, if where even a brother's son may exist, the constituting [him or another] a son given and so forth be legal; then, though in the texts subjoined, the resemblance of the virtue of a son is shewn to obtain in the son of a rival wife, where even such son existed, the affiliation of a son given and so forth by the step-mother might take place. Brihaspati:—"The same rule is also ordained in respect to many wives of the same person."(2) Manu: "If among all the wives of the same husband, one bring forth a male child, Manu has declared them all by means of that son to be mothers of male issue."(3)

24. Should it be thus objected, it is wrong. In the same manner as where the curd,—which is the object contemplated by the person proceeding to produce the grumous substance alluded to in the passage of the Vedas subjoined—is wanting, it is that substance which causes the individual to proceed therein and not the whey or serous part [incidentally produced]; for that not being the object is of no use.—"He mixes coagulated milk (dadhi) in boiled milk; that is a curd of two-milk whey (ámikshá),—an oblation to the Vaisvadeva set of divinities, and whey for horses." Or—in the same manner, as on the anniversary of the death of a father, the ceremonials of a párvana rite having been completed in honour of the father and other two paternal ancestors in ascent above him,—a párvana rite is not recommended on account of the sráddha in honour of the maternal grandfather and other two male ancestors [on the mother's side]: for the commencement of the same depends on the sráddha in honour of the paternal ancestors, [which, in this instance, would have been already completed]:—So also in the case in question, the affiliation of a son by a woman proceeding legally, with the sanction of her husband, to constitute for him male issue, only takes place where no son of that person may exist. But if he have any, although she may be destitute of the same, such adoption does not obtain; for to proceed therein would be unproductive of the object.

25. In that case she would not be exempted from exclusion from heaven. In anticipation of this objection, the two texts of Manu and Brihaspati, by propounding the existence of filial relation in the son of a rival wife, [to his step-mother,] provide for her exemption from exclusion from heaven and the performance for her sráddha; for except the offspring of her husband she can have no other.

26. Since [a wife] can have no other offspring but the issue of her husband, the son in question even preserves her lineage. Therefore, where the son of a rival wife exists, as the whole

(1) Manu, ix. 136. (2) Brihaspati, xxv. 100.
(3) Manu, ix. 183.

benefit even of a son is attained, no affiliation, [by the step-mother, of him or another,] as a son given and so forth, takes place.—But as the capacity of prolonging lineage does not obtain in a brother's son, although such son may exist; a son given and so forth must be affiliated: there is in this respect a material difference.

27. But if, a brother's son existing, the affiliation of him only is indispensable where there may be only one brother's son, in that case the adoption cannot take place; on account of the text of Vasish ha, which recites,—"An only son let no man give or accept.—For he is destined to prolong the line of his ancestors."(1)

28. Should this be alleged, it is not accurate. For the text in question is applicable to a case other than that of the Dvyámushyáyaṇa, or son of two fathers.—In the case of the Dvyámushyáyaṇa, the extinction of lineage contemplated in the clause of the text containing the reason would not take place; and an indication found in the Puránas as to the affiliation, by Vetála, of the son as [his brother] Bhairava. Thus—"Accordingly he (Bhairava) at some time cohabited with Urvasi, a celestial nymph, and procreated on her a son named Suvesa. Vetála also affiliated him as his son: and in consequence, by means of this son, both attained heavenly salvation."

29. In answer to the question—by whom is a son to be given? Saunaka declares: "By no man having an only son is the gift of a son to be ever made. By a man having several sons such gift is to be anxiously made."

30. The author apprehending an extinction of lineage in case of the gift of a son by one even having two sons says; "by one having several sons."

31. But by a woman the gift may be made with her husband's sanction if he be alive; or even without it if he be dead, have emigrated or entered a religious order.—Accordingly, Vasishtha: "Let not a woman either give or receive a son unless with the assent of her husband."(2) (*a*)

32. Now, if there be no prohibition there is assent: on account of the maxim: "The wish of another, not prohibited, is assented to."—Yájñavalkya suggests the independence of the woman. "He whom his father or mother gives is a son given."—Also in another place, "deserted by his father and mother or either of them."(3)

(1) Vasishtha, xv. 3 and 4. (2) Vasishtha, xv. 5.
(3) Yájñavalkya, ii. 130.
(*a*) See note (*a*), p. 358.

SECTION II.

The form for adoption—The most eligible period for selection—Rules under certain circumstances—The adopted son may be son of two fathers.

1. Next Saunaka propounds the form for the adoption of a son. "I, Saunaka, now declare the best adoption: One having no male issue has died, having fasted for a son;—"

2. Adoption] the form for adoption. Having fasted] having observed a fast on the day preceding the adoption. Vriddha Gautama has—"The impotent man or also one whose offspring has died."

3. "Having given two pieces of cloth, a pair of ear-rings, a turban and a ring for the fore-finger to a priest religiously disposed, a follower of Vishṇu and thoroughly read in the Vedas. Having venerated the king and virtuous Bráhmins by a madhuparka."

4. If the king be at a distance, [he should thus venerate] the chief of the village; for a text recites: "having invited all kinsmen, and the chief of the village also." Bráhmins.] The plurality meant by this word is restricted to three on account of the argument, exemplified in the instance of the white partridges.(a) The venerating Brâhmins is with a view to their asking [the child in adoption].

5. "Both a bunch of sixty-four stems, entirely of the kusa grass, and fuel of the palása tree,—also having collected these articles: having earnestly invited kinsmen and relations: having entertained the kinsmen with food, and especially Bráhmins: having performed the rites, commencing with that of placing the consecrated fire, and ending with that of purifying the ghee: having advanced before the giver let him cause to be asked thus: 'give the boy.'—"The giver being capable of the gift [should give] to him with recitation of the five prayers, the initial words of the first of which are yo-yajñyena, &c."

6. 'Should give' is understood—'kinsmen'] the kinsmen of the father and mother. 'Relations'] sapiṇḍas. The inviting these is for the sake of witnessing.—Having entertained invited kinsmen, and Bráhmins previously appointed, and (on account of the conjunction 'and') invited relations.—This is the meaning.

7. The same author continues.—"Having taken him by both hands with the recitation of the prayer, commencing,—'Devasyatva, &c.:' having inaudibly repeated the mystical invocation,—'Angád-angát, &c.;' having kissed the forehead of the child; having adorned with clothes, and so forth, the boy bearing the reflection of a son."(b)

8. 'Reflection of a son'](c) the resemblance of a son,—or, in

(a) *Vide* discussion in the 8th sutra of the 1st pada of the 11th adhyáya of Jaimini's Mimámsá. It is there affirmed by a long course of reasoning that the plural number in the word 'partridges' in a certain Vedic text denotes the number three and not any indefinite number beyond two.

(b) *Vide* note (a), p. 372.

(c) *Vide* note (a), p. 394.

other words,—the capability to have been begotten by the adopter through appointment and so forth.

9. The text continues.—"Accompanied with dancing, songs, and benedictory words, having seated him in the middle of the house; having according to Sastra, offered a burnt offering of milk and curds (to each incantation,) with recitation of the mystical invocation 'yas-tvá-hrida'—the portion of the Rig-veda, commencing, 'tubhyam-agne',—and the five prayers of which the initial words of the first are 'Some-dadat.'"

10. Vriddha Gautama.—"Let him cause to be offered, as burnt offerings, an hundred oblations of milk, with ghee, contemplating in his mind, as the object, the lord of created beings, with recitation of the prayer,—'prajá-pate na-detám.'"

11. Vasishtha.—"A person being about to adopt a son should take an unremote kinsman or the near relation of a kinsman; having convened his kinsmen, and announced his intention to the king and having offered a burnt offering with recitation of the prayers denominated 'Vyáhriti,' in the middle of his dwelling. But if a doubt arise let him set apart like a Súdrá one whose kindred are remote. For it is declared in the Vedas, 'many are saved by one.'"(1)

12. 'Dwelling'] house. 'A doubt'] if from the great difference of the country and language of one whose kinsmen are remote a doubt arise as to his lineage, disposition and so forth; this being the case till the ascertainment of these particulars let him not initiate such person.—On this point, a reason is assigned,—"many are saved, &c." 'Many'] the father and other ancestors.

13. One of these forms is indispensable.

14. In continuation Saunaka says: "Let the best of the regenerate, to the extent of his ability, bestow a gratuity on the officiating priest; a king half even of his dominion; next in order a Vaisyá three hundred coins; a Súdrá the whole even of his property; if indigent, to the extent of his means."

15. 'Half his dominion'] the produce for one year of half his dominion; for a text of Vriddha Gautama recites: "Let him proffer the profits arising from half his dominion received in one year." According as he may be in a superior, middling or inferior condition [let a Vaisyá give] three hundred pieces of gold, silver or copper, respectively: on account of the text of Vriddha Gautama: "Let him proffer three hundred pieces in gold or in silver or in copper according as his condition may be superior or otherwise." 'His whole property'] that is, the acquisition by hire for one year.

16. Baudháyana propounds a special rule for the followers of the Taittireya Veda.—"We are about to explain the mode for the adoption of a son. One about to adopt produces two pieces of cloth, a pair of ear-rings, a ring and a priest thoroughly read in the

(1) Vasishtha, xv. 6—8.

Vedas, a bunch of sixty-four stems of the kusa grass and fuel of the 'purna' tree. Then having invited kinsmen into the middle of the dwelling: and having made a representation to the king: having sat down by the direction of a Bráhmin in the assembly: having caused to be exclaimed auspicious day! benediction! prosperity! having performed rites commencing with the recitation of the prayer—'yad-devay-jana,'—down to the placing the vessels for water: having advanced before the giver, let him thus beg, 'Give me this son'—The other replies, 'I give'—He receives the child [and says;] 'I receive thee for the sake of religious duty: I adopt thee for offspring'—Then having adorned him with the cloths, the ear-rings and ring: having performed the investiture and other ceremonials down to the kindling a flame of fire; having dressed the oblations, he offers a burnt offering after having recited the incantation in the first chapter of the [Yajur] Veda commencing —"yastvá-hridákirinámanymána"—with recitation of the sacrificial prayer—"yasyaivam-sukrite-játa-veda, &c."—he offers a burnt offering. Next, having performed the burnt sacraments, where the prayers denominated 'vyáhriti' are recited: and that designated 'svishti-krit' with other ceremonials, being completed, down to the bestowing an excellent cow he presents the fee [saying; "yours are] these two cloths, the ear-rings, and the ring likewise." But subsequently, if a real legitimate son is born, he [the adopted son]' succeeds to a fourth share—so says Baudháyana."(1)

17. In case no form, as propounded, should be observed, it will be declared that the adopted son is entitled to assets sufficient for his marriage.

18. On the subject [of adoption,] Manu says: "A given son must never claim the gotra and estate of his natural father. The funeral cake follows the gotra and estate: but of him who has given away his son the obsequies fail."(2)

19. It is declared by this, that through the extinction of his filial relation from gift alone, the property of the son given in the estate of the giver ceases; and his relation to the family of that person is annulled.

20. And, accordingly, since extinction of relation to the family [of the natural father,] and so forth is shewn, and as a text recites, —"let the father initiate his own sons,"—the initiatory rites even of the adoption, which are yet to be completed subsequent to adoption, are to be performed by the natural father are not to be cancelled. For no authority in respect to the renewal of these is forthcoming; since the removal of the taint of the seed and so forth, and the acquisition of Brámhinhood, as suggested in the following texts, have already taken place. "Thus the sin produced by the seed "and womb acquires expiation, &c." "As a picture is produced gradually by many lines, Brámhinhood in the same manner proceeds by the observance of form."(3)

(1) Baudháyana, vii. 5, 1, 7—16. (2) Manu, ix, 142.
(3) II. Cole. Dig., 301, cxxxiv.

21. Otherwise it would follow from the text subjoined, that he would have to perform also the rites of Pumsavana and Simantonnayana. "Let the father himself perform the eight initiatory rites (or on his default some other) in their order." Now, this would be improper; for it would not be consistent with approved practice: besides, as his authority to perform initiatory rites is from his relation of father subsequent only to adoption, the incompetency of the adopter in respect to rites which should take place previous thereto, follows; for the appropriate time of performance has elapsed.

22. But if, however, the initiatory rites which should have taken place previously have not been performed by the natural father, they are, in that case, to be completed by the adopter even, on account of the indispensable necessity of removing the taint of the seed and womb and for the sake of preserving the order prescribed for the performance of the rites in question.

23. And, accordingly, if the rite of investiture merely be performed the filiation of the son given, as son of the adopter is completed in conformity with the text of Vasishtha subjoined. But this must be understood in respect to an adoption taking place within the primary season for the rite in question which extends to the eighth year; otherwise the capacity of having been able to perform that rite, during the principal season being wanting, as there would be no competency for the same at a secondary season, the rite would remain unperformed,—"Sprung from one following a different Sákhá, (or branch of the Vedas,) the given son even when invested with the characteristic thread under the family name of the man himself, according to the form prescribed by his peculiar Sákhá becomes participant of the duties of such Sákhá."

24. And relative to the subject in question, [it is to be observed, that] should an agreement subsist stipulating that the son adopted should be son of the natural father and adoptive father likewise, a special rule for his participating in the family of both by reason of being a Dvyámushyáyaṇa will be declared.

25. "Oh! lord of the earth, a son having been regularly initiated under the family name of his [natural] father, unto the ceremony of tonsure, does not become the son of another man. When, indeed, the ceremony of tonsure and other rites of initiation are performed [by the adopter] under his own family name [then only] can sons given, and the rest be considered as issue: else they are termed slaves.—Whether he be one whose initiation has been completed, or one whose infancy has passed on adoption after the fifth year, the adopter should first perform the sacrifice for male issue."(1) As for what they quote thus from the Puráṇas, that is unauthentic.

26. Were it even authentic, still the interpretations given by some that,—"One initiated in ceremonies down to that of tonsure

(1) II. Cole. Dig., 329, clxxxii and ccclxxxiii.

under the family name of the natural father bears no filial relation to the adopter; but such relation obtains, where the ceremonies commencing with that of tonsure are performed by the adopter only" and "if a child whose tonsure has been completed [by the natural father] or one past five years of age be adopted, in that case, his filial relation does not accrue"—are inaccurate. For a repetition [of the same position in two sentences of the same passage] would result; the generally received rule, as recognized by all good persons in respect to the filial relation previous to the investiture of the characteristic thread, of one also adopted under five years of age, would be invalidated; and the adopter dying at that juncture, incompetency [of the adopted] to perform his obsequies would result.

27. On the contrary, this is the meaning of the passage.—Filial relation [to the adopter] of one initiated down to tonsure, under the family name of his natural father being first barred,—on the repetition of that ceremony and the rest, such relation is exempted from the prohibition: and accordingly, since previous to the performance of tonsure and the other rites by the adopter, the servile state of one initiated of him who has passed his fifth year is intimated, after the performance of that ceremony and the rest [by the adopter,] filial relation to him is established. In respect to one whose initiation has not been performed and a child who is under five years of age, this relation is obtained by law alone, and this is well known.

28. Or this may be the interpretation;—'a son [if adopted,] though initiated as far as tonsure by his natural father is not a son [to such father]:' the author having thus premised such son not to be filially related [to his natural father], the sentence 'anyataschaputratám yáti' (meaning 'and he acquires filial relation to another') is subjoined as a reason: and thus the objection that one term 'putraḥ' (son) and the particle '*cha*' are unmeaning is obviated.

29. And thus, on account of uniformity of import with the text of Vasishṭha before cited, (v. § 23.) by the compound epithet 'chúḍádya' in the denotation of which the term 'chúḍá' is not included, rites commencing with that of investiture for persons of a regenerate class would be suggested; but for Súdrás marriage and so forth is implied.

30. "After the fifth year."(*a*) This regards a Bráhmin, seeking the fruit of holiness resulting from the study of the Vedas. For since the fifth year only is the principal season for the investiture of the characteristic thread of one desirous of such holiness, as is shewn by this text,—"For a Bráhmin desirous of holiness, resulting from the study of the Vedas, the fifth year, &c."—the passage in question has the same foundation. But for one not so desirous,—"after the eighth year, the adopter, &c."

31. [In adoption] respect should be shewn to the several principal seasons, for the performance of the upanayana rites of

(*a*) *Vide* note (*a*) p. 388.

the Kshatriyá and the Vaisyá, respectively. For he only to whom authority produced in the principal season might have attached is capable to perform such initiatory rite at a secondary season [if not qualified by the renewal of the ceremony of tonsure, preceded by a sacrifice for male issue.] This has been in effect stated (v. § 23).—But in regard to tonsure, attention to the secondary season may be observed on account only of express passages of law.

32. 'Sacrifice for male issue.' Since a person of the three first classes only is competent to perform this by such person, the filial relation must be completed through the rites of tonsure and the rest, preceded by a sacrifice for male issue. But by a Súdrá, the same even [is produced,] through the rite of marriage alone. Thus the whole is unimpeachable.

33. And thus the practice of all the ancients, even in respect to the adoption of a son unlimited to any particular time is upheld. For the construction suggested is self-evident.

34. Also in the same manner under the second interpretation, (§ 28) the exclusive filial relation to the natural father, of the adopted son, whose tonsure has been completed, having been first barred by the conjunction 'and' in the sentence,—"and he acquires filial relation to another"—a common relation to the natural and adoptive fathers is obtained; on account of both even having performed initiatory rites: and this must be understood where there may be a stipulation to this effect between the two,—"This is son to us both," and such only is called a Dvyámushyáyaṇa having two fathers, and belonging to two gotras.

35. But is it not seen that the kshetraja or son of the wife only is son of two fathers? Accordingly Hárita—["The husband] living, [at the time of the appointment] they call [the offspring of the same] the son of the wife: for [the natural father] has no control over him. Where he was dead [at such time,] they call him Dvyámushyáyaṇa: for there can be no doubt as to who was the natural father."(1) Manu says: "But the owners of the seed and of the soil may be considered in this world as joint owners of the crop, which they agree by special compact, in consideration of the seed, to divide between them."(2) The special compact proposed is a stipulation between the owners of the seed and soil, both destitute of male issue, to this effect,—"Mine is the soil, thine the seed: the offspring produced shall belong to both." Conformably, there is this text,—"A son begotten by one who has no male issue on the wife of another man, under the legal appointment, is lawfully heir and giver of funeral oblations to both families."(3)—But this relationship in question does not appear to apply to the son given; on the contrary, the following passage of Manu before cited is conclusive even of an opposite meaning. "A given son must never claim the family and estate of his natural father."(4)

(1) II. Cole. Dig., 363, ccxli.
(2) Manu, ix. 53.
(3) Yájñavalkya, ii. 127.
(4) Manu, ix. 142.

36. Should it be so contended it is wrong; the relation to both fathers of the son given also is established: since by referring to this text of Baudháyana,—"What is declared in respect to one even of many, regulated by the same law, let him perform that, for the whole even. They are considered of the same description,"(1) the rules regarding the son of the wife are obtained in respect to the son given and the rest likewise: and the following text has a general application in the Pravarádhyáya of Sankhyáyana:—"He should perform two sráddhas, or at one, contemplating them separately, he should designate at each oblation, both the adoptive and natural fathers; together with the two ancestors in immediate ascent above each."

37. Accordingly, Satyáshádha by the compendious rule,—"of absolute Dvyámushyáyaṇas, of both, &c."—having propounded a relation to both families (including the patriarchal saints) of absolute Dvyámushyáyaṇas, who are sons of the soil, applies by analogy, the rule regarding these [to sons given and the rest,] by another aphorism, commencing,—"of sons given and the rest, like the Dvyámushyáyaṇa, &c."—and this is explained by the commentator:—"Treating on absolute Dvyámushyáyaṇas, the author mentions those incompletely so,—"Of sons given and the rest, &c." unto these only, not to issue beyond,[does the connection to both families extend.] If the initiatory rites are performed by the first only [the family is his:] but if by the adopter, that of the latter on account of priority. Through him only in the case of descendants beyond, [the family is determined].'

38. The drift of this explanatory passage is this.—As in the case of the son of the wife,—should there be an agreement between the two, the adopted son participates in the gotra of both: otherwise where the whole of the initiatory rites have been performed by the natural father only, he shares the gotra of such father; but in the case of the initiation being performed by the adopter, in that of the latter,—that is, the adopter, on account of 'priority,'—meaning superiority. 'Through him only, in the case of descendants beyond, the gotra is determined.'

39. Accordingly, Paithinïsi: "Those sons given, purchased, made, and the son of an appointed daughter, who are in such case affiliated through the adoption of a holy saint by another, are sons of two fathers."

40. The meaning is this: Where a mutual agreement between the natural father and adopter exists; [those affiliated] through the adoption of a holy saint, that is, one propounded by a holy saint, are Dvyámushyáyaṇas.—This is clearly declared [in the Prayogapárijáta.] "Sons given, purchased, and the rest are sons of two fathers: their marriage may not take place in either family even, as was the case of Sringa Saisira."

(1) Not found.

41. The state of a son given as Dvyámushyáyaṇa, cannot obtain since the property of the natural father in such son not being extinguished, the rule for the gift propounded in the text,—"Whom the father or mother may give, &c."—would be unmeaning.

42. It cannot thus be objected. From gift, preceded by an agreement, such [as that premised,] in the case in question even, the common relation [to both fathers,] of such given son, is established; like the property of the owner, (since he himself is one of the beneficiaries) in water made common, (as a river, and so forth,) by a relinquishment; alluded to in such passages, as that subjoined,) the object of which is every creature: and which extinguishes the peculiar property of the individual himself. "This water is relinquished by me as common to all beings, let all creatures enjoy it by bathing, drinking, and immersion." Enough has been said.

SECTION III.

Funeral rites performed by the absolutely adopted son,—by the Dvyámushyáyaṇa—Relation of sapiṇḍa, in the families of the adoptive and natural fathers, respectively.

1. Next, the funeral rites performed by a son given are determined. In respect to these, although the son given be first adopted, yet the legitimate son existing, he is not competent to officiate in the sixteen sráddhas ending with the sapiṇḍi-karaṇa; for his superiority in rank is denied by Devala [who says,] "A real legitimate son being subsquently born, superiority of rank from age does not vest in them."(1) And a text of Yájñavalkya recites: "Amongst these, the next in order is heir and presents funeral oblations, on failure of the preceding."(2) Otherwise the adopted son in every respect resembles the real legitimate one.

2. A special distinction obtains in respect of the sráddha on the anniversary of the day of death. Accordingly Játúkarṇa: "Annually (pratyabda,) let the son of the wife and legitimate son perform [obsequies] according to the párvana form: the other ten sons should perform a rite dedicated to a single ancestor."

3. 'The other ten,'—the son given, and the rest.

4. Parásara likewise.—"[Sráddha] by the legitimate son for a father, who has departed this life, on all occasions is in honour of three ancestors: that by those belonging to more than one (aneka-gotra) is consecrated to a single ancestor on the anniversary of the day of death.

5. "By those belonging to more than one family"—meaning those belonging to two families.

6. The legitimate son, and the son of the wife also, if they preserve a consecrated fire, are competent to perform a párvana, or

(1) II. Cole. Dig., 332, exc. (2) Yájñavalkya, ii. 132.

double rite. For the text of Jábala,—"By one preserving a consecrated fire, the sráddha is to be performed always in the párvana form"—corresponds with the Matsya-purána. "By those, other than the real legitimate son, and the son of the wife indifferently, whether they do or do not preserve a consecrated fire, a rite in honour of a single ancestor is to be performed. This is an established rule."

7. An aphorism of Sankhyáyana propounds a distinction in respect to the observances prescribed for the Dvyámushyáyaṇa. "Having duly performed the preparatory ceremonial called avanejana, where there may be a diversity of fathers both at each oblation."

8. Where there may be a diversity of fathers at each oblation, both the natural father and the adopter,—"let him celebrate" is understood.

9. In the Pravarádhyáya also. "Those who are begotten by a paternal uncle, for the obsequies of a single person, are the sons of the adoptive father only. Then, if there be no issue begotten on their [the natural fathers'] wives, let [the sons begotten on the wives of others,] take the estate and offer in their honour oblatons [consecrated to three ancestors]; if, however, there should be [such issue,] still such sons should present funeral cakes to both even [according to the text of a venerable saint,] the adopted son should form two sráddhas or at one, contemplating him separately, he should designate at each oblation, both the adoptive and natural fathers; together with the two ancestors in immediate ascent above each."

10. The meaning is;—where there may be no express agreement on the part of the adoptive father [that the adopted sons shall belong to both;] and [the natural father,] may not have other offspring: and where there may be such agreement by that person, and such offspring may exist, relation to both fathers obtains. In the passage cited, an option in respect to performing distinct sráddhas is contained.

11. Nor does this [merely] refer to the son of the wife; for by the compendious rule of Satyáshádha,—"of sons given and the rest like the Dvyámushyáyaṇa, &c."—the rules regarding such son are shewn to be applicable, also to the adopted son who may be son of two fathers.

12. Accordingly Hárita: "Of these, in the first place, the tutelary saints of the natural father [are those of the adopted son]. He should perform two several sets of funeral oblations, each consisting of two; or designate both at each (eka) oblation [of one set;] his son—in his second, his grandson, in his third [should do the same]. Some hold three to be partakers of the wipings; others, that they extend to the seventh degree."(1)

(1) II. Cole. Dig., 363, ccxli.

13. 'Of these'—That is from amongst these fathers, in the first place, the set of tutelary saints of the natural father—in the second, that of the husband of the wife [are those of the adopted son who] has thus two sets of tutelary saints.—"In each (eka) oblation"—a repetition [of the word 'eka'] is understood on account of the text of Ápastamba. "If son to both fathers, he should designate both at each several oblation."(1) 'In his second'] at his oblation to his grandfather, the son of the Dvyámushyáyaṇa. 'In his third'] that is,—at his oblation to his great-grandfather, the grandson of the Dvyámushyáyaṇa.

14. But if the adoptive father died first [the son] should present the oblation [first] to him; if the natural father then to the natural father; should both have died [at once,] then let him present first to the natural father and next to the adoptive. Márichi declares this: "He who may be procreated on a widow by a kinsman or one unrelated should first present the oblations to and perform the sráddhas in honour of the adoptive father, and after this to the natural father. If in any instance the adoptive father should survive [the natural one,] let the issue present [the oblations] first to the natural father: but the same must be given [to him] last [should he survive; the adoptive father] being dead. If both may have died [together, the oblation must be given,] first to the natural father: after him the son should present the same to the adoptive father. Should it not be first offered to the natural father, it does not endure."

15. By this, the performance of a párvana rite, by the son of both fathers, on the death of either even, is shewn.

16. In the same manner, by parity of reasoning where there may be a diversity of mothers, the sires of the natural mothers, are first designated by a son, who is son to two fathers, at the sráddha, (suggested by the passage subjoined) in honour of the maternal grandsires: subsequently, the sires of her who is the adoptive mother—"Where the paternal sires are honoured, there certainly are the maternal."(2)

17. But the absolutely adopted son presents oblations to the father and the other ancestors of his adoptive mother only; for he is capable of performing the funeral rites of that mother only: and thus, in conformity with the spirit of the passage, "He is [destined] to continue the line of his ancestors,"—which is subjoined as the reason, [in the text of Vasishṭha], the prohibition [therein],—"let not a man give an only son," refers to an adopted son, other than the Dvyámushyáyaṇa, or son of both fathers; for [where the adopted son is such,] no extinction of lineage ensues, as has already been declared.

18. The relation as sapiṇḍa, is next considered. This extends to three degrees; in the family of the natural father, by reason of

(1) Ápastamba.

(2) Attributed to Pitamaha in Sarasvati Vilasa.

consanguinity: and in that of the adopter, through connection by the funeral cake.

19. This Kárshnájini declares.—"As many as there may be degrees of forefathers: with so many, their own forefathers, let sons given and the rest associate the deceased. In order, their sons with two forefathers, their grandsons with (samam) one [should do] the same.—The fourth degree is excluded. This [relation of sapiṇḍa] extends to three degrees."

20. This is the meaning of the text—: according as the deceased adoptive fathers, may be sons legitimate, adopted [absolutely], or of two fathers: as many as there may be degrees of forefathers, three or six, with so many, let sons given, and the rest associate them;—that is—connect by admixture of funeral cakes. —Of the cases in question, where the adoptive fathers are real legitimate sons [the forefathers, with whom their association is to be made,] are three, viz., the father, paternal grandfather and great-grandfather; where sons adopted absolutely, three, viz., their adoptive father, grandfather and great-grandfather; and where sons of two fathers, six, viz., their natural father and the other two, and their adoptive father, and the other two.

21. And thus it is intimated, that those who are the benefitted manes, contemplated at a párvana rite, performed by the adopted son himself, are the same at the sapiṇḍi-karaṇa ceremony also celebrated for the adopted son by his own son: and the sons of an adopted son should perform his sapiṇḍi-karaṇa with his adopter, and two out of the three forefathers of this latter.—And in the same manner the grandsons of the adopted son should perform the same—that is, the association of their own fathers, by admixture of funeral cakes with—(for 'sama' is used by Kárshnájini in the sense of this preposition,) the adopted son, the adopter, and one out of three forefathers of that person: viz., the father of the adopter.

22. 'The fourth degree is excluded.'] Whatever person, at any time, performs the ceremony of sapiṇḍi-karaṇa for any one does the same with three forefathers only of that individual;—by this, [which is the meaning of what preceded the passage cited] the exclusion of the fourth degree is established. The propounding the same position, [by the passage in question,] in conformity with the rule of logic,—"a position having been established, its re-introduction, is for the sake of a peremptory rule"—is meant to bar the relation as sapiṇḍa [to the adopted son], of those, who (in the case of a real legitimate son,) would have partaken of the wipings of the oblations; by reason of their being precluded therefrom [in the present case]. The author declares this very position [in subjoining 'this:' that is, 'this relation of sapiṇḍa, &c.

23. And thus, the general relation of sapiṇḍa extending to the seventh degree, which is propounded in the Matsya-puráṇa, in the text subjoined, is barred by the special rule in question.—"The fourth and the rest in ascent are the partakers of wipings, the

father and the others participate in oblations of food, the seventh presents the same.—The relation by oblations of food, of these, extends to the seventh degree." Consequently, the contrary doctrine suggested by Hárita, in this passage,—"They propound the partakers of the wipings to be three, or according to some they extend to the seventh degree"—is consistent, [as the opinion of the opposer of the correct doctrine.]

24. This very position is elsewhere compactly declared.—"But of adopted sons, the relation of sapiṇḍa extends to three degrees in the family of the natural father; and in like manner in that of the adopter; this is a fixed rule."

25. The relation of sapiṇḍa extending to three degrees in both families is propounded in respect to the son of two fathers: for his performing the ceremony of association by admixture of funeral cakes, with two sets of three ancestors is declared [by Kárshnájini.] But the connection by funeral oblations of the absolutely adopted son obtains in the family of the adoptive father only: on account of the extinction of the funeral oblation of him, who hath given away his son, intimated in the following text of Manu, before cited —"A given son must never claim the gotra and estate of the natural father; the funeral cake follows the gotra and estate: but of him who has given away his son the obsequies fail.(1)

26. "The sons given, purchased, and the rest who are adopted from those of his own general family by observance of form acquire induction into the family [of the adopter].—But the relation of the sapiṇḍa is not included." The meaning is—sons given and the rest though adopted from those of his own general family by the observance of form only, participate in the family [of the adopter]. But the relation of sapiṇḍa is not established in them: and such relation not obtaining in those belonging to the same general family, of course, it cannot subsist in those of a different general family. As for this text of Vriddha Gautama, it is prohibitory of the relation of sapiṇḍa extending to seven degrees, which might be inferred from analogy to the real legitimate son: or it bars the impurity for ten days and so forth, arising from the relation of sapiṇḍa.—But it does not prohibit totally such relation on account of the several texts before cited.

SECTION IV.

The impurity of the adopted son on occasions of birth and death—His marriage.

1. Next the impurity and so forth of the adopted son [on occasions of birth and death,] is determined. In respect to this topic [it is to be observed that], there is no reciprocal impurity of the absolute adopted son in the family of the natural father; for

(1) Manu, ix. 142.

relation to his family and the presenting in his honour, funeral oblations being barred, the extinction of impurity is an obvious consequence. But the Dvyámushyáyaṇa has to observe impurity in both families.

2. In the Bárhma-puráṇa [it is written,] "the son given, the son self-given, the son made, as well also the son purchased, and the deserted son, who are always to be cherished, belong to a different family present distinct oblations, and perpetuate a different lineage, and on occasions of birth and death become impure for three days."

3. Parásara. "On occasions of birth and death, impurity for three days is ordained for him, who, whether of a different or of the same gotra is initiated and adopted by the will [of the adopter]."

4. "So also, excepting the legitimate son, on the death and birth of the son of the wife and the rest, a general impurity, lasting three nights, always takes place in every class.—This is a settled point."

5. 'Always'—subsequent even to the investiture of the characteristic thread. As the relation of one, though of the same general family, to the family of his adoptive father is attained through the observance of form, after the previous extinction of relation to the family of his natural father; there is no distinction between an adopted son of a different general family [and one of the same]. Therefore, the impurity or three days propounded in the text in question [indifferently for either] is even proper.

6. Thus, where the adopted son may be unmarried, the offence of parivedana is not incurred by the marriage of a legitimate son subsequently born: nor is there any objection against an adopted son marrying before his elder whole brother.

7. But since the extinction of his relation by oblations of food in the family of the natural father is shewn, the marriage of an absolutely adopted son might take place therein: and the marriage of a Dvyámushyáyaṇa with the issue of a female removed in relation more than three degrees would be proper.

8. It is not so; for in the text of Manu subjoined, of which (on account of the conjunctive particle 'and') the construction is—'who is not connected as sapiṇḍa, to his father [as well as mother;]'—the term 'father' is used to exclude [from marriage], a female related as sapiṇḍa to and belonging to the gotra of the natural father also of an adopted son, although exclusively belonging to the family of his adoptive father.—"She who is not connected as sapiṇḍa to his mother and father, and not belonging to the general family of either, is approved amongst twice-born men for espousal and conubial intercourse."

9. Nor should it be argued that, still, where the father of the adopted son is himself an adopted son, there would be no reason barring the marriage with a female removed in relation to such

father beyond the third degree; since her relation as sapiṇḍa to, and being of the gotra of the father are wanting. Because the relation of sapiṇḍa in question does not apply to marriage: but is an universal relation of that denomination, predefined as extending to the seventh degree in the line of the father, and to the fifth in that of the maternal grandfather. Thus there is no inconsistency. These several descriptions of relations of sapiṇḍa will be enlarged on in their appropriate places respectively.

SECTION V.

The succession by inheritance of adopted sons lineally and collaterally —in the case of Súdrás—of the Dvyámushyáyaṇa.

1. The heritable right of the adopted son is next propounded. On this subject Brihaspati says,—"The real legitimate son alone is master of the paternal estate: for the sake of affection, let him allow subsistence to the rest."(1)

2. 'The rest.'] those who are excluded from participating in the estate—'Affection.'—Love.—'Subsistence.'—Maintenance.

3. Yama also.—"Sons are pronounced by intelligent saints to be twelve: of these, six are kinsmen and heirs; and six kinsmen but not heirs. Those versed in the distinctions of class declare that the first is the one begotten by the man himself: the second, the son of the wife, the third, the son of the appointed daughter; the fourth, the son of the twice-married woman; the son of the unmarried daughter is considered the fifth: and [the sixth], the son secretly born in the man's house. These six present funeral oblations—The son deserted, and the one received with a pregnant bride, the son given, and the son made, and fifthly, the son purchased, and the son presented by himself; these six, whose filial relation proceeds from an overt act of acceptance are kinsmen but not heirs."(2)

4. Nárada, "The real legitimate son; the son of the wife by appointment; the son of an appointed daughter; the son of an unmarried daughter; the son received with a pregnant bride; the son of hidden origin; the son of a twice-married woman; the deserted son; the son given; the son purchased; the son made also; and the one given by himself; these are declared to be the twelve descriptions of sons. Of these, six are heirs to kinsmen and six not heirs to kinsmen. Each according to priority in order is considered as superior; and the last successively as inferior. On the death of the father, according to their order they succeed to his estate. On defect of each preceding more worthy, let the next less worthy son obtain the estate."(3)

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(1) Brihaspati, xxv. 35. (2) II. Cole. Dig., 332, cxci.
(3) Nárada, xiii, 45—47.

5. The meaning is that on default of each preceding, the next succeeding in order is entitled to the property.

6. After having previously enumerated as sons, the real legitimate son, the son of the wife, the son of an appointed daughter, the son of a twice-married woman, the son of the unmarried daughter, the son of hidden origin, the son received with a pregnant bride, the son given, the son purchased [the son made], the son self-given, the deserted son, and the son obtained in any manner whatsoever; Vishṇu adds "Of these, the first in order respectively is the most worthy; he only is entitled to the estate; but he should support the rest."(1)

7. After having enumerated the legitimate son, the son of the appointed daughter, the son of the wife, the son of hidden origin, the son of an unmarried daughter, the son of the twice-married woman, the son given, the son purchased, the son made, the son self-given, the son received with a bride, and the deserted son, Yájñavalkya subjoins:—"Amongst these, the next in order is heir, and presents funeral oblations on failure of the preceding."(2)

8. Manu,—"Not brothers nor parents, but sons are heirs to the deceased."(3) And again: "On failure of the best and of the next best, let the inferior in order take the heritage, but if there be many equal, let all be sharers of the estate."(4)

9. 'Equal.'—"In respect to virtue or quality as being legitimate, the son of the soil or wife and so forth.—'Of the best,'—that is, of the legitimate son and the others.—'The inferior in order,' the less worthy:—meaning, the son of the wife and those following.

10. The same author.—"The son of the body and the son of the wife may succeed to the paternal estate; but the ten other sons can only succeed in order to a share of the inheritance."(5) Hárita.—"The son begotten by the man himself, the son of the wife, the son of the twice-married woman, the son of the appointed daughter, and the son of hidden origin are kinsmen and heirs. The son given, the son purchased, the son deserted, the son received with a pregnant bride, the son self-given, and the son anyhow obtained are heirs but not kinsmen."(6)

11. Manu,—"Of the twelve sons of men, whom Manu sprung from the Self-existent has named, six are kinsmen and heirs: six not heirs, but kinsmen. The son begotten by a man himself, the son of the wife, the son given, the son made, a son of concealed birth, and a son rejected, are the six kinsmen and heirs.—The son of an unmarried daughter, the son of a pregnant bride, the son bought, the son of a twice-married woman, the son self-given, and the son by a Súdrá are the six kinsmen but not heirs.(7)

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(1) Vishṇu, xv. 28—30.
(2) Yájñavalkya, ii. 132.
(3) Manu, ix. 185.
(4) Manu, ix. 184.
(5) *Ibid*, ix. 165.
(6) II. Cole. Dig., 331, clxxxvii.
(7) Manu, ix. 158—160.

12. Baudháyana.—"He pronounces the real legitimate son, the son of an appointed daughter, the wife's son, the sons given and made, the son of concealed origin, and the deserted son also participators in the estate,—the son of an unmarried daughter, the son received with a pregnant bride, the son bought, the son of a twice-married woman, also the son self-given, and the Nisháda, or son of a Súdrá, he pronounces partakers of the gotra."(1)

13. This declaration, that the son of the unmarried daughter and the rest participate in the family only, is for the sake of barring their taking a share of the heritage, where, one even of the others before enumerated, viz., the real legitimate son and the rest may exist.

14. Vasishṭha having previously mentioned, the son received with a pregnant bride, the son bought, the son self-given, the deserted son, and the son by a Súdrá woman, and alluding to the legitimate son, and the rest in another place says: "Where there may be no heir to a person of any of the classes, let these take the heritage."(2)

15. Devala having enumerated the real legitimate son, the son of an appointed daughter, the wife's son, the son of an unmarried woman, the son of secret origin, the deserted son, the son received with a pregnant bride, the son of a twice-married woman, the son given, the son self-given, the son made, the son purchased adds: "Those twelve are pronounced sons for the sake of issue: some are sprung from himself: some from another also: some acquired by [an overt act of adoption]: and others filially related independent thereof. Of these, the first six are kinsmen and heirs [to collaterals], the rest are so merely to the father: and a special rule obtains, according to the priority in rank of the sons: all these sons are considered as heirs, to one having no real legitimate son; but should a son be subsequently born, no right of primogeniture attaches to them. Of these, those who are equal in class take a third share; but those inferior in rank should live in subjection to one of equal rank receiving maintenance."(3)

16. Kátyáyana—"If a legitimate son be born, the rest are pronounced sharers of a third part provided they belong to the same class: but if they be of a different class they are entitled to food and raiment only."(4)—In some copies the reading is—"are pronounced sharers of a fourth part."

17. Vasishṭha—"When a son has been adopted, if a legitimate son be afterwards born, he shares a fourth part provided [the estate] may not have been expended in acts of merit."(5)(*a*)

18. 'He'] the adopted son. 'Provided' the whole estate (which is understood) may not have been expended by the legitimate son in acts of merit, that is, in sacrifice, and so forth.

(1) Baudháyana, ii. 2, 3, 31 and 32.
(2) Vasishṭha, xvii. 39.
(3) II. Cole. Dig., 332, cxc.
(4) *Ibid*, 348, ccxviii.
(5) Vasishṭha, xv. 9 and 10.
(*a*) *Vide* note (*a*), p. 422.

19. For the sake of removing the conflicting contradictions of several varying texts of Manu and the rest, the following interpretations are offered on these texts. The declaration in Brihaspati's text, that the real legitimate son succeeds exclusively to the estate, and that the rest are entitled merely to subsistence, regards such sons of the wife and the rest who are unequal in class, on account of uniformity with text of Kátyáyana and Devala. And the rule also in the texts of Nárada and the rest, for the succession of the son given and the rest to the estate, on default of the son of the wife, and the rest, regards their succession to the whole estate, and therefore the rule for the fourth of the share of the real legitimate son propounded by Vasishṭha, where such son may be born subsequent to the adoption of a son given, must be understood as applying to a son given.

20. So, also, the rule for succeeding to a third share in the texts of Devala and Kátyáyana, must be alleged to refer to a son given, endowed with eminent qualities, on account of uniformity with the following text of Manu.—"Of the man to whom a son has been given, adorned with every quality that son shall take the heritage, though brought from a different family:"(1) 'With every quality'] class, science, observance of duties.

21. Others affirm it must apply to the son of the wife in conformity with this passage in the Bráhma-purána: "Let the real legitimate son even, who is subsequently born, enjoy the whole estate—the son of the wife takes a third share, the son of an adopted daughter a fourth."(2)

22. In the same manner the doctrine of one holy saint that the son given is an heir to kinsmen, and that of another, that he is not such heir, are to be reconciled by referring to the distinction of his being endowed with good qualities or otherwise. By reason of succeeding to the estate of sapiṇḍa kinsmen, as well as to that of the father, he is [argued by the one to be] heir to kinsmen; and on account of the particle 'only' in the phrase "of the father only" (occurring in the passage subjoined) from inheriting merely of the father, he is [argued by the other, not to be] such heir.—"Of these, the first six are heirs to kinsmen: the other six of the father only."

23. And thus [the objection of] variation from the son given being enumerated higher and lower in the order of inheritance, and so forth, by different holy saints, respectively, is obviated by the distinction as to his qualities good and bad.

24. Therefore, by the same relationship of brother, and so forth, in virtue of which the real legitimate son would succeed to the estate of brother or other kinsmen, where such son may not exist [the adopted son] takes the whole estate even.

25. Since it is a restrictive rule that a grandson succeeds to the appropriate share of his own father, the son given, where his

(1) Manu, ix. 141. (2) II. Cole. Dig., 344, ccxvii.

adopter is the real legitimate son of the paternal grandfather, is entitled to an equal share even with a paternal uncle, who is also such description of son; therefore, a grandson, who is an adopted son, may [in all cases,] inherit an equal share even with an uncle.—This must not be alleged [as a general rule]. For there would be this discrepancy: where the father of the grandson were an adopted son he would receive a fourth share: but the grandson, if he were such son [of him], would receive an equal share [with an uncle in the heritage of the grandfather]. And, accordingly, whatever share may be established by law, for a father of the same description, as himself; to such appropriate share of his father, does the individual in question, [viz. the adopted son of one adopted] succeed. Thus what has been advanced, is correct. The same rule is to be applied by inference to the great-grandson also.

26. But although the son of the wife, the son given and the rest may succeed to the general estate, their unfitness to succeed to a kingdom is declared.—Thus it is ordained in the Vedas.—"The legitimate son, the son of the wife, the son given, the son made, the son of concealed birth, and the son rejected, take shares of the heritage. The son of an unmarried girl, the son of a pregnant bride, the son bought, the son of a twice-married woman, the son self-given, and the slave's son, these six are contemptible as sons: on failure of the first in order, respectively, let him invest the next with filial right. But let him not appoint to the empire the son of a twice-married woman, nor a son self-given, nor one born of a female slave"—In the same authority also—"Let not the king appoint to the empire the wife's son and the rest: [nor] cause to be completed through such sons the solemnities for his forefathers, a legitimate son existing."(1)

27. It is replied—If another ordinance of law exist, a special rule for the sake of convenience [must be construed] as conveying even the same meaning. Therefore, the first passage cited, which is declaratory of the right to succession of the next in order, on failure of each preceding extends even to the whole empire, as conforming to the texts of Nárada and the rest before mentioned: and the latter passage prohibits the equal participation of the son of the wife and the rest, if a legitimate son exist, or it refers to a son of the wife and the rest unequal in class: otherwise it would be vexatious were adverse meanings deduced from each passage. But if, however, this is admitted [and disregarded,] then [we allege] that by the passage in question, the appropriate shares of the son of the wife, the son given and the rest, respectively, are not forbidden if a real legitimate son exist; but the investing such son with empire is ordained [by that author] after having previously barred the same in respect to those sons, in case of the existence of a real legitimate son.

28. Thus, the son of the wife, the son given, and the rest receive the share prescribed for them by the general law. For

(1) II. Cole. Dig., 333, cxcii.

grounds for limiting the operation of the same are wanting: nor does the particular passage in question obstruct its operation: for that relates to a different subject. Accordingly, their right to inherit is clearly laid down in the preceding passage,—"take shares of the heritage." Nor can it be said they participate [merely] in the estate other than the empire. For the empire also is included in the passage in the question. The exclusion of the son of the twice-married woman and the rest from the empire, although each preceding in order may have failed, is in virtue of a distinct provision in respect to them.

29. The mode, however, of partition between the son of the wife, the son given and the rest and the legitimate son, which has been propounded in what preceded does not apply to the Súdrá class.

30. Since in the following texts of Manu and Yájñavalkya, respectively, a share equal to that of the real legitimate son is prescribed for the son even by a female slave of a man of the class in question: and the heirship with the daughter's son of such son only when having no brother is intimated: the equal partition of the son of the wife, the son given, and the rest, with the real legitimate son whilst the father lives and their succession to the moiety of the share of such son, where the father may be dead at the time of partition, follow *à fortiori*. And otherwise there would be a great inconsistency if, where the son of the wife, the son ginen, and the rest took the fourth of the share of the legitimate son, the son by a female slave, whose title is infinitely inferior in respect to these, were to take an equal share with the legitimate son. Manu—"But a son begotten by a man of the servile class on his female slave, or on the female slave of his male slave may, by permission, take a share of the heritage. Thus is the law established.(1) Yájñavalkya: "Even a son begotten by a Súdrá on a female slave may take a share by the father's choice. But if the father be dead, the brothers should make him partaker of the moiety of a share; and one who has no brothers may inherit the whole property, in default of daughter's sons."(2)

31. If according to this authority, where there may be no son of the wife and the rest, but there may be a wife and daughters, the daughter's son be entitled to share [with the son by a female slave]: the rule for the succession of the daughter [or other proper heir] would be infringed; therefore, if any even in the series of heirs down to the daughter's son exist, the son by a female slave does not take the whole estate; but only shares equally with such heir.

32. Accordingly, the text subjoined must be construed as referring merely to Súdrás. "A son given being thus adopted, if by any chance a legitimate son should be born, let them be equal partakers of the father's estate."(3) So also in the following text,

(1) Manu, ix. 179. (2) Yájñavalkya, ii. 133 and 134.
(3) Vasishṭha, xv. 9.

the equal participation of all lawfully begotten Súdrás having been first propounded, the succession to equal shares, of the other sons likewise is subsequently declared by the sentence, ("if there be an hundred sons") occurring therein. "For a Súdrá is ordained a wife, of his own class and no other. Those begotten on her shall have equal shares; if there be an hundred sons [the same mode of partition shall obtain]."(1) If the sentence in question be referred to the real legitimate son only, the position contained in it being obtained from what preceded, its repetition would be unmeaning.

33. The son given, who is a Dvyámushyáyaṇa, if both his adoptive and natural fathers have no other male issue, takes the whole estate [of both] : one adopted, where legitimate issue [of the adopted] existed does not participate [in the estate of the adopter]; but a legitimate son being born [to the natural father] subsequent to the adoption, [the adopted son] takes half of the share of a legitimate son. If [however such issue be subsequently born to the adopter, the adopted son in question] takes half of the share which is prescribed by law for an adopted son, exclusively related to his adoptive father, [where legitimate issue may be subsequently born to that person]."

34. The Pravarádhyáya declares this—"Should they have no offspring begotten on their wives, [the adopted sons] take the whole estate."—A text of Nárada also [declares] : "Let those, being sons to both fathers, present separately to each, oblations of food and water; they take the half a share in the estate of the contributor of the seed and owner of the soil."(2) It has been before said, that the terms contributor of the seed "and" owner of the soil "are illustrative severally of the natural and adoptive fathers.

SECTION VI.

Exclusion from inheritance, in what cases.

1. As sons blind, lame, and so forth do not inherit—and since it is ordained that their legitimate son and son of the wife only participate in the estate of the paternal grandfather; a son given, or other description of son, adopted by such persons, have no right to the estate of the paternal grandfather; but to maintenance only. For alimony being provided for the wives of persons blind and so forth, maintenance for their adopted sons is inferred *á fortiori*.

2. So also having previously declared sons blind, lame and so forth not to be heirs, an author adds—"Of these the sons legitimate and sons of the wife, who are free from defect participate in a share: the childless wives of those, [who are blind, and so forth] are to be supported if virtuous. Their daughters are to be maintained as long as unmarried."(3)

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(1) Manu, ix. 169. (2) Nárada, xiii. 23.
(3) Yájñavalkya, ii. 142.

3. In the same manner—since it is shewn that a son given participates with a real legitimate son born subsequent to his adoption—a son adopted, where a legitimate son exists does not take a share. Accordingly, an author declares the non-succession to a share of one adopted without observance of rule:—"Him existing, a son being created, and a son given, existing, one being adopted informally; that estate is his only who is justly master of the father's wealth"—Manu. "He who adopts a son without observing the rules ordained, should make him the participator of the rites of marriage, not a sharer of the wealth."(1)

4. It is declared by an author in the following text, that a son given likewise, who is of a different class does not inherit. "If one of a different class, should, however, in any instance have been adopted as a son, he should not make him the participator of a share.—This is the doctrine of Saunaka." Something to this effect has been before declared. Enough has been said.

Peroration.—This treatise, succinctly exhibiting the rules relative to the adopted son is excellent, and the heart-delighting preserver of law through the serious application of students. Thus is the Dattaka-Chandriká, compiled by the great preceptor, the fortunate Devaṇḍa-Bhaṭṭa, completed.

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(1) Not found.

DÁYA-BHÁGA.

A TREATISE ON INHERITANCE.

CHAPTER I.

PARTITION OF HERITAGE DEFINED AND EXPLAINED. TWO PERIODS OF PARTITION OF THE FATHER'S WEALTH.

1. Partition of Heritage, on the subject of which various controversies have arisen among intelligent persons not fully comprehending the precepts of Manu and the rest, should be explained for their information. Hear it, O ye wise!

2. Now Partition of Heritage (dáyabhága) is expounded; and, on that subject, Nárada says: "Where a division of the paternal estate is instituted by sons, that becomes a topic of litigation, called by the wise Partition of Heritage".[1]

3. What came from the father is "paternal": and this signifies property arising from the father's death. The expressions "paternal" and "by sons" both indicate any relation: for the term "partition of heritage" is used for a division of the wealth of any relative by any relatives. Accordingly Nárada, having premised "partition of heritage" as a topic of litigation, (§ 2) shows under that head the distribution of effects left by the mother and the rest. So Manu, likewise, premising "inheritance", but without employing the word *father* or any other specific term, propounds the division of effects of any relative.

4. The term "heritage", by derivation, signifies "what is given". However, the use of the verb (dá) is here secondary or metaphorical; since the same consequence is produced, namely, that of constituting another's property after annulling the previous right of a person who is dead, or gone into retirement, or the like. But there is no abdication of the deceased and the rest in regard to the wealth.

5. Therefore the word "heritage" is used to signify wealth in which, property, dependent on relationship to the former owner, arises on the death of that owner.

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[1] Nárada, XIII, 1.

6. Is the partition of heritage a splitting of the divided thing into integrant parts? Or does partition consist in the chattels not being united with the heritage of a co-heir? The first position is not correct; for the heritage itself would be destroyed. Nor is the second accurate: for, though wealth be conjoined, it may be said, "this chattel, which was before parted, is not my property, but my brother's".

7. Nor can it be affirmed, that partition is the distribution, to particular chattels, of a right vested in all the co-heirs, through the sameness of their relation, over all the wealth. For, relation, opposed by the co-existent claim of another relative, produces a right (determinable by partition) to portions only of the estate: since it would be burdensome to infer the vesting and divesting of rights to the whole of the paternal estate; and it would be useless, as there would not result a power of aliening at pleasure.

8. The answer is that partition consists in manifesting, [or in particularizing] by the casting of lots or otherwise, a property which had arisen in lands or chattels, but which extended only to a portion of them, and which was previously unascertained, being unfit for exclusive appropriation, because no evidence of any ground of discrimination existed.

9. Or partition is a special ascertainment of property, or making of it known by reference to a particular share of a particular person.

10. Even in the case where a single article, as a female slave, a cow, or the like, is common to many, the property is severed by separate use, in carrying burdens, or in milking, during specific periods, in turn, as directed by Brihaspati: "A single female slave should be employed on labour in the houses [of the several co-heirs] successively, according to the number of shares:—and water of wells or ponds is drawn for use according to need [without stint]—such property should be distributed by equitable adjustment; else it would be useless [to the owners]".[1] These three half stanzas occur in many places, [as quotations from this author] though not found in their regular order [in his institutes of law].

11. Does it not follow from the text of Nárada, ("Let sons regularly divide the wealth when the father is dead")[2] which authorizes sons to divide their father's effects after his death, that sons have not property therein before partition? nor can partition be a cause of property, since that might be misunderstood as extending even to the wealth of a stranger.

12. The answer is this: since it is the practice of all people to call an estate their own immediately after the death of their father or other predecessor and since the right of property is

[1] Brihaspati, XXV. 82.

[2] Nárada, XIII. 2.

acknowledged to vest without partition in the case of an only son, the death of the relative is the cause of property. Consequently, there is no room for any misconstruction.

13. Acquisition is the act of the acquirer; and one, who has the state of ownership dependent on acquisition, is the acquirer. Is not birth, therefore, as the act of the son, rightly deemed his mode of acquisition? and have not sons consequently a proprietary right, during their father's life, [even without his being degraded or otherwise disqualified] and not by reason of his death? and, therefore, is it declared: "In some cases birth alone [is a mode of acquisition,] as in the instance of a paternal estate".

14. That is not correct; for it contradicts Manu and the rest: "After the [death of the] father and the mother, the brothers being assembled must divide equally the paternal estate: for they have not power over it while their parents live".[1]

15. This text is an answer to the question, why partition among sons is not authorized, while their parents are living: namely, "because they have not ownership at that time".

16. It should not be argued, that the text intends want of independence, like another passage of the same author, concerning acquisitions by a wife or son: for there is no evidence of property then vested; but, in the other instance, dependence is rightly supposed to be meant, since property is suggested by the phrase "what they earn" or acquire.

17. Besides, it would contradict revealed law, if these persons had not ownership even in that which is earned by them; since religious rites, enjoined by the holy writ, and performable by means of their own wealth, could not be performed.

18. Devala too, expressly denies the right of sons in their father's wealth. "When the father is dead, let the sons divide the father's wealth: for sons have not ownership while the father is alive and free from defect."[2]

19. Besides, if sons had property in their father's wealth, partition would be demandable even against his consent: and there is no authority that property is vested by birth alone; nor is birth stated in the Smritis as a means of acquisition.

20. In some places it is thus alleged: but there, by the mention of birth, the relation of father and son, and the death of the father are mediately indicated as causes of property.

21. The right of one may consistently arise from the act of another: for an express passage of law is authority for it; and that is actually seen in the world, since, in the case of donation, the donee's right to the thing arises from the act of the giver;

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[1] Manu, IX. 104.

[2] II. Cole. Dig., 196, V.

namely, from his relinquishment in favor of the donee who is a sentient person.

22. Neither is property created by acceptance; since it would follow that the accepter was the giver: for gift consists in the effect of raising another's property; and that effect would here depend on the donee, in like manner as a votary, though making a relinquishment of a thing offered to a deity, is not a sacrificer; but the priest alone is so denominated, as performing the act of presenting its relinquishment, which act was the purpose of the ceremony termed 'a sacrifice'. Besides the word 'gift' occurs in passages of law as signifying something antecedent to acceptance.

23. Is not receipt acceptance? for the affix, in the word *svíkára*, implies a thing becoming what it before was not; and the act of making his own (svánkurvan) what before was not his, constitutes appropriation or acceptance (svíkára). How then can property be antecedent to that?

24. The answer is, though property had already arisen, it is now by the act of the donee, subsequently recognizing it for his own, rendered liable to disposal at pleasure; and such is the meaning of the terms 'acceptance' and 'appropriation'. From its association with teaching, and assisting at sacrifices, receipt (pratigraha) is, without question, a mode of acquisition, though it do not immediately create property: for, in the case of assisting at sacrifices and so forth, property in wealth so gained arises solely from the gift of the reward.

25. Or the survival of the son, at the time of his father's death, may constitute his acquisition. Besides, in the case of wealth left by a brother or other relative, the property of the rest of the brothers or other heirs, must, however reluctantly, be acknowledged to arise either from his death or from the survival of the rest at the time of his death.

26. Hence the passage before cited, beginning with the words "after the [death of the] father", being intended to declare property vested at that period, recites partition, which, of course, then awaits the pleasure [of the successor]. For it cannot be a precept, since the same result was already obtained.

27. Nor can it be a restrictive injunction. For, as that is contrary to the text of Manu, "Either let them thus live together; or let them dwell apart for the sake of religious merit",[1] and as it produces visible consequences only, it can neither be an injunction for an immediate partition, nor a limitation of the time.

28. Besides, partition would be admissible, only at the moment immediately following the father's death and not at any later period; for there is not in this instance, as in that of a sacrifice on

[1] Manu, IX. 111.

the birth of a child, an objection analogous to the hazard of the new-born infant's life: and partition to be made at any time after the father's death while the sons live, and at their pleasure, is already established.

29. Therefore, the text of Manu must be argued [by you] to intend the prohibiting of partition, although the son's right subsist during the life of the father. But that is not maintainable. For it would thus bear an import not its own.

30. Hence the texts of Manu and the rest [as Devala 18] must be taken as showing that sons have not ownership in the wealth of the living parents, but have it in the estates of both when they are dead. One position is conveyed by the *terms* of the text; the other by its *import*.

31. Mere death is not exclusively meant: for that includes also the state of a person degraded, gone into retirement, or the like, by reason of analogy, as occasioning an extinction of property.

32. Accordingly Nárada says: "When the mother is past child-bearing and the sisters are married, or if the father be lost, or no longer a householder, or if his temporal affections be extinct".[1]

33. "Lost" signifies degraded; "no longer a householder", having quitted the order of a householder. If the reading be "when he is exempt from death", then the sense is "when, being exempt from death (that is, alive,) he is devoid of affections". The variation in the reading is unfounded.

34. Here also, to show that the sons' property in their father's wealth arises from such causes as the extinction of his worldly affections, this one period of partition, known to be at their pleasure, is recited explanatorily: for the recital is conformable to the previous knowledge; and the right of ownership suggests that knowledge.

35. Since any one parcener is proprietor of his own wealth, partition at the choice even of a single person is thence deducible; and the concurrence of heirs, suggested as one case of partition, is recited explanatorily in the text "the brothers being assembled, &c."[2] Else, since assemblage implies many, there could be no distribution between two; for no passage of law expressly propounds a division between two co-heirs.

36. Is not the eldest son alone entitled to the estate on the death of the father and not the rest of the brothers? for Manu says: "The eldest brother may take the patrimony entire; and the rest may live under him, as under their father".[3] And here

[1] Nárada, XIII. 3.
[2] Manu, IX. 104.
[3] Manu, IX. 105.

the term *eldest* contemplates him who rescues his father from the hell called Put; and not the senior survivor. "By the eldest, as soon as born, a man becomes father of male issue, and is exonerated from debt to his ancestors; such a son, therefore, is entitled to take the heritage. That son alone, on whom he shifts his debt, and through whom he tastes immortality, was begotten from a sense of duty: others are considered as begotten from love of pleasure."[1]

37. Not so: for the right of the eldest [to take charge of the whole] is pronounced dependent on the will of the rest. Thus Nárada says: "Let the eldest brother, by consent, support the rest, like a father; or let a younger brother, who is capable, do so: the prosperity of the family depends on ability".[2] By consent of all, even the youngest brother, being capable, may support the rest. Primogeniture is not a positive rule. For Manu declares: "Either let them thus live together, or let them live apart for the sake of religious merit: since religious duties are multiplied when apart, separation is, therefore, lawful".[3] By the terms "together or apart", and "for the sake", he shows that it is optional at their choice.

38. Thus there are two periods of partition: one, when the father's property ceases; the other by his choice, while his right of property endures.

39. But three periods must not be admitted; one, when a father dies; another, when he is devoid of worldly regards, and the mother's courses have ceased; and a third, by his own choice, while the mother continues to be capable of bearing children, and the father still retains temporal affections. For, if the cessation of the mother's courses be joined, as a condition, with the extinction of the father's worldly inclinations, it might be concluded, that partition could not take place among sons, however desirous of it, when the father becomes a hermit (his temporal propensities being extinguished); since the cessation of the mother's courses cannot yet have happened [while she is still between thirty and forty years of age]: for the marriageable age, as ordained by Manu, is twelve years for a girl to be married to a man aged thirty, and eight years for one to be espoused by a man aged twenty-four; and the age prescribed for entering into another order is fifty years.

40. If it be said, the extinction of passions, without any condition annexed to it, marks the period for a division of the father's estate, that should be rejected; for it might be thence inferred that partition would not take place, although the father were a degraded person, if he were not at the same time devoid of temporal affections.

41. But, if this be pronounced to be another period of partition, then four distinct periods would arise: (1) the death of the

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[1] Manu, IX. 106 and 107. [2] Nárada, XIII. 5.
[3] Manu, IX. 111.

father; (2) his degradation; (3) his disregard of secular objects; and (4) his own choice.

42. The alleged power of sons to make a partition, when the father is incapable of business [by reason of extreme age, &c.] has been asserted through ignorance of express passages of law [to the contrary]. Thus Hárita says: "While the father lives, sons have no independent power in regard to the receipt, expenditure and bailment of wealth. But, if he be decayed, remotely absent, or afflicted with disease, let the eldest son manage the affairs as he pleases". [1] So Sankha and Likhita explicitly declare: "If the father be incapable, let the eldest manage the affairs of the family, or, with his consent, a younger brother conversant with business. Partition of the wealth does not take place, if the father be not desirous of it, when he is old, or his mental faculties are impaired, or his body is afflicted with a lasting disease. Let the eldest, like a father, protect the wealth of the rest; for [the support of] the family is founded on wealth. They are not independent, while they have their father living, nor while the mother survives". [2]

43. These two passages, forbidding partition when the father is incapable of business, or when he labours under a lasting disorder, direct that the eldest son should superintend the household, or a younger son who is conversant with business. The text last cited, therefore, runs "not if the father desire it not"; and it was by mistake that it was written "if he be incapable of business, partition of the wealth takes place, &c."

44. Therefore, two periods only are rightly affirmed: one, when property ceases by the owner's degradation from his caste, disregard of temporal matters, or actual death; the other by the choice of the father, while his right still endures.

45. The condition "when the mother is past child-bearing", regards wealth inherited from the paternal grandfather. Since other children cannot be borne by her when her courses have ceased, partition among sons may then take place: still, however, by the choice of the father only. But, if the hereditary estate were divided while she continued to be capable of bearing children, those born subsequently, would be deprived of subsistence. And that would not be right: for a text of Manu states: "They who are born and they who are yet unbegotten and they who are actually in the womb, all require the means of support: and the dissipation of their hereditary maintenance is censured". [3]

46. It is because there are two periods of partition, in the case of the father's wealth, that Manu, Gautama and others, avoid the word "dead", and use the term "after". Since the father's right then ceases, the term "after" is employed to express that sense.

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[1] II. Cole. Dig., 199, VIII. [2] II. Cole. Dig., 203, XVII.
[3] I. Cole. Dig., 411, XII., where it is quoted as Nárada's.

Hence this is one period of partition. Another, regulated by his choice, while he does retain worldly affections, is indicated by the text; "a son born after the division, &c."

47. The condition "and when the sisters are married" does not intend a distinct period, but inculcates the necessity of disposing of them in marriage, as the text of Nárada: "What remains of the paternal inheritance over and above the father's obligations and after payment of his debts, may be divided by the brothers, so that their father continues not a debtor" [1] is intended to inculcate the obligation of paying the father's debts, not to regulate the time of partition.

48. From that text of Nárada it results that co-heirs, making a partition, may apportion the debts of their father or other predecessor, with the consent of the creditors, or must immediately discharge the debts. For such is the purpose of ordaining a partition of the residue after payment of debts. Accordingly, Yájñavalkya propounds the distribution of a mother's wealth remaining over and above her debts: "Daughters share the residue of their mother's property, after payment of her debts: and the male issue, in default of daughters". [2] This will be fully explained under the head of "debt".

49. Or the restriction may signify that the mother's effects should be shared by the sons, if their sisters have been disposed of in marriage: but, if they be unmarried, the inheritance is held in common with them. This will be explained in due time.

50. It is thus established [by reasoning, as well as by positive law,] that two periods exist for the partition of wealth appertaining to a father.

CHAPTER II.

Partition, made by a Father,—of property ancestral,—and of his own acquisition.

1. Now the period for the distribution of an estate left by a paternal grandfather is propounded. On that subject, Brihaspati says: "On the death of both parents, participation among brothers is allowed: and even while they are both living, it is right if the mother be past child-bearing". [3]

2. This passage does not relate to the father's wealth; for the text, concerning the exclusive right of a son born after partition, would be without relevancy: since there can be no son born when the woman is past child-bearing. Nor can it be supposed to relate to the mother's wealth: for she would thus be stript of her wealth.

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[1] Nárada, XIII. 32. [2] Yájñavalkya, II. 128.
[3] Brihaspati, XXV. 1.

The condition, that she be past child-bearing, must then relate to the estate of the grandfather or other remoter ancestor.

3. Neither can the fact of her being past child-bearing be a cause of partition, independently of choice: for there can be no partition without a will to make it.

4. If it be asked, 'admitting a choice, whose must it be?', the answer is, 'the father's'; as deduced from the text of Gautama: "After the father, let sons share his estate. Or while he lives, if the mother be past child-bearing, and he desire partition".[1]

5. Hence the death of both parents is one period, and since "parents" are here exhibited in the dual number, a division of the father's estate, among brothers of the whole blood, ought to be made only after the death of the mother.

6. The mention of the mother's death does not here imply partition of her wealth: since the phrase "even while they are both living" cannot relate to the mother's separate property. It must be understood as relating to the property of another person; for the legality of partition in the instance of survival is there propounded, in the same case in which the death of both parents was declared a reason of distribution. The death of the mother must not be construed as connected with her wealth. This subject will be explained at length in its place.

7. Therefore, the death of both parents is one period for partition of an estate inherited from a grandfather or other ancestor, and the other is by the choice of the father when the mother is past child-bearing.

8. A division of it does not take place without the father's choice; since Manu, Nárada, Gautama, Baudháyana, Sankha and Likhita, and others, (in the following passages, "they have not power over it",[2] "they have not ownership while their father is alive and free from defect",[3] "while he lives, if he desire partition",[4] "partition of heritage by consent of the father",[5] "partition of the estate being authorized while the father is living",[6] &c.,) declare without restriction, that sons have not a right to any part of the estate, while the father is living, and that partition awaits his choice: for these texts, declaratory of a want of power, and requiring the father's consent, must relate also to property ancestral, since the same authors have not separately propounded a distinct period for the division of an estate inherited from the paternal grandfather.

9. The text of Yájñavalkya ("The ownership of father and son is the same in land which was acquired by his father, or in a

[1] Gautama, XXVIII. 1—2.
[2] Manu, IX. 104.
[3] II. Cole. Dig., 196, V.
[4] Gautama, XXVIII. 2.
[5] Baudháyana, II. 2, 3—8.
[6] Not found.

corrody, or in chattels",[1]) properly signifies, as rightly explained by the learned Udyota, that, 'when one of two brothers, whose father is living, and who have not received allotments, dies leaving a son, and the other survives; and the father afterwards dies; the text, declaratory of similar ownership, is intended to obviate the conclusion, that the surviving son alone obtains his estate, because he is next of kin. As the father has ownership in the grandfather's estate, so have his sons, if he be dead. There is not, in that case, any distinction founded on greater or less propinquity; for both equally confer a benefit by offering a funeral oblation of food, as enjoined, at solemn obsequies'. Such is the author's meaning.

10. Accordingly a great-grandson, whose father as well as grandfather are dead, is in like manner equally an heir with the son and grandson. For he likewise presents a funeral oblation.

11. But, if sons had ownership during the life of their father, in their grandfather's estate, then, should a division be made between two brothers, one of whom has male issue and the other has none, the children of that one would participate, since they have equal ownership.[a]

12. It should not be objected that such cannot be the meaning of the text, as not being the subject premised: for, the case of grandsons by different fathers was the proposed subject.

13. A "corrody" signifies what is fixed by a promise in this form, "I will give that in every month of Kartikai".

14. "Chattels". From their association with land, slaves must be here meant.

15. Or the meaning of the text may be, as set forth by Dhárésvara: 'A father, engaged in giving allotments at his pleasure, has equal ownership with his sons in the paternal grandfather's estate. He is not privileged to make an unequal distribution of it at his choice, as he is in respect of his own acquired wealth'.

16. So Vishṇu says: "When a father separates his sons from himself, his will regulates the division of his own acquired wealth. But, in the estate inherited from the grandfather, the ownership of father and son is equal".[2]

17. This is very clear. When the father separates his sons from himself, he may, by his own choice, give them greater or less allotments, if the wealth were acquired by himself: but not so, if it were property inherited from the grandfather; because they have an equal right to it. The father has not in such a case an unlimited discretion.

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[1] Yájñavalkya, II. 121. [2] Vishṇu, XVIII. 1—2.

[a] The author refutes the opponent's view by the principle of *reductio ad absurdum*.

18. Hence both opinions, that the mention of like ownership provides for an equal division between father and son in the case of the property of the paternal grandfather and that it establishes the son's right to require partition, ought to be rejected.

19. The other text should be explained in the very same manner.

20. It is consequently settled that the father has his double share in wealth inherited from the grandfather or other ancestor; and that a distribution takes place at the will of the father only, and not at the choice of the sons.

21. "If the father recover paternal wealth [seized by strangers, and] not recovered, he shall not, unless willing, share it with his sons: for in fact it was acquired by him." [1] In this passage, Manu and Vishṇu, declaring that he shall not, unless willing, share it, because it was acquired by himself, seem thereby to intimate a partition among sons even against the father's will, in the case of hereditary wealth not acquired by him. But here also, the meaning is that a father, setting about a partition, need not distribute the grandfather's wealth which he retrieved: but must distribute the rest of it certainly, and not according to his own pleasure. Those authors do not thereby indicate partition at the choice of sons.

22. The father has ownership in gems, pearls and other moveables, though inherited from the grandfather, and not recovered by him, just as in his own acquisitions and has power to distribute them unequally, as Yájñavalkya intimates: "The father is master of the gems, pearls and corals, and of all [other moveable property]; but neither the father, nor the grandfather, is so of the whole immoveable estate". [2]

23. Since the grandfather is here mentioned, the text must relate to his effects. By again saying "all" after specifying "gems, pearls, &c.," it is shown, that the father has authority to make a gift or any similar disposition of all effects, other than land, &c., but not of immoveables, a corrody and chattels [*i.e.*, slaves]. Since here also it is said "the whole", this prohibition forbids the gift or other alienation of the whole, because [immoveables and similar possessions are] means of supporting the family. For the maintenance of the family is an indispensable obligation; as Manu positively declares: "The support of persons who should be maintained is the approved means of attaining heaven. But hell is the man's portion if they suffer. Therefore, [let a master of a] family carefully maintain them". [3]

24. The prohibition is not against a donation or other transfer of a small part not incompatible with the support of the family. For the insertion of the word "whole" would be unmeaning.

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[1] Manu, IX. 209. Vishnu, XVIII. 43. [2] I. Cole. Dig., 411, XIII.
[3] Not found in Manu's Institutes, but quoted as his in I. Cole. Dig., 410, XI.

25. From the express mention of immoveables, a prohibition is inferred by the analogy of the loaf and staff[a] against the gift or other transfer of a corrody or of slaves.

26. But, if the family cannot be supported without selling the whole immoveable and other property, even the whole may be sold or otherwise disposed of, as it appears from the obvious sense of the passage; and because it is directed that a man should by all means preserve himself.

27. It should not be alleged, that by the texts of Vyása: ("A single parcener may not, without the consent of the rest, make a sale or gift of the whole immoveable estate, nor of what is common to the family". "Separated kinsmen, as those who are unseparated, are equal in respect of immoveables: for one has not power over the whole, to give, mortgage or sell it" [1]), one person has not power to make a sale or other transfer of such property. For here also, as in the case of other properties, there equally exists a property consisting in the power of disposal at pleasure.

28. But the texts of Vyása (27), exhibiting a prohibition, are intended to show a moral offence, since the family is distressed by a sale, gift or other transfer, which argues a disposition in the person to make an ill use of his power as owner. They are not meant to invalidate the sale or other transfer.

29. So likewise other texts (as this, "Though immoveables or bipeds have been acquired by a man himself, a gift or sale of them should not be made by him, unless convening all the sons", [2]) must be interpreted in the same manner. For here the words "should be made" must necessarily be understood.

30. Therefore, since a gift or sale is prohibited, the precept is infringed by making one. But the gift or transfer is not void; for a fact cannot be altered by a hundred texts.

31. Accordingly Nárada says: "When there are many persons sprung from one man, who have duties and transactions apart, and are separate in business and character, if they be not accordant in affairs, should they give or sell their own shares, they do all that as they please, for they are masters of their own wealth". [3]

32. We resume the subject. Thus, for the reasons before stated, since the equal participation of father and son in the estate of the grandfather or other ancestor would be incongruous, and since it cannot be intended by the text (§ 9) to confer on sons a right to demand partition, that text must either be meant to prevent an

[1] The former half of this text is found in I. Cole. Dig., 303, VI.; but the latter half is found in Brihaspati (XXV. 93), to whom it is elsewhere ascribed.
[2] I. Cole. Dig., 411, XIV., where it is ascribed to Yájñavalkya.
[3] Nárada, XIII. 42—43.
[a] See note, p. 24 *infra*.

unequal distribution depending solely on the father's pleasure, or it must intend the equal right of a nephew, whose father is deceased, to share with his uncle.

33. Thus a division even of wealth inherited from the grandfather must be made by the sole choice of the father. But, with this difference, *viz.*, that it is requisite, the mother should have ceased to be capable of bearing issue: whereas, in the instance of his own acquired property, partition takes effect without that condition. But, after the death of the father, it takes place equally in the case of both kinds of property without distinction.

34. Therefore, the periods of partition are two, even in the case of wealth inherited from ancestors.

35. In such case, if the father voluntarily make a partition with his sons, he may reserve for himself a double share of property ancestral. Brihaspati, by saying, "The father may himself take two shares at a partition made in his lifetime",[1] and Nárada, "Let the father, making a partition, reserve two shares for himself",[2] do so ordain, without restriction.

36. Besides, a double share of the grandfather's wealth is the father's due according to this argument.

37. Deductions of a twentieth part, (with the best of all the chattels) and of half a twentieth, and of a quarter thereof, are propounded by a passage of Manu: ("The portion deducted for the eldest is the twentieth part of the heritage, with the best of all the chattels; for the middlemost, half of that; for the youngest, a quarter of it",)[3] and shares increased by one portion, by half of one, and by a quarter, are propounded by other passages of the same author: ("If a deduction be thus made, let equal shares of the residue be allotted: but if there be no deduction, the shares must be distributed in this manner; let the eldest have a double share; and the next born, a share and a half; and the youngest sons each a share; thus is the law settled").[4] Gautama likewise, after directing, that "A twentieth part shall belong to the eldest, besides a pair [of goats or sheep,] a car, together with beasts that have teeth in both jaws, and also a cow and bull";[5] (*i.e.*, a pair of goats, or the like, a car with horses or other beasts having teeth in both jaws, and a bull together with a cow; all this shall belong to the eldest;) and after directing, that "Cattle blind of one eye, or aged, dwarfish, or disfigured, shall belong to the middlemost, if there be more than one";[6] *i.e., aged* or old, *dwarfish* or stunted, *disfigured* or having a distorted tail; these shall appertain to the middlemost, provided the cattle be numerous; and after further directing, that "A sheep, grain, iron, a house, and, together with a cart, one of each sort of

[1] Brihaspati, XXV. 5.
[2] Nárada, XIII. 12.
[3] Manu, IX. 112.
[4] Manu, IX. 116—117.
[5] Gautama, XXVIII. 5.
[6] *Ibid*, XXVIII. 6.

quadrupeds, shall be given to the youngest: all the residue shall be equally divided"[1] (*i.e.*, a sheep and other things, as specified, shall be allotted to the youngest; but let the brothers divide equally the whole of the residue), has by the following passage allotted a double share to the eldest: "Or let the first-born have two shares, and the rest take one a-piece".[2]

38. It must not be argued, that the eldest has a double share allotted to him as the acquirer of the wealth. For the allotment of two shares is directed "if there be no deduction": now a deduction could not be supposed in the case of an acquisition; and, since the middlemost and youngest are not, inasmuch as they are acquirers of the property, distinguished from the eldest, the assigning of a share and a half, or other less portion to them, would be incongruous, and the use of the term "eldest, &c.", would be unmeaning.

39. Accordingly, in the case of a partition between an appointed daughter and a true legitimate son, Manu ordains: "A daughter having been appointed, if a son be afterwards born, the division of the heritage must in that case be equal, since there is no right of primogeniture for a woman".[3] Thus propounding equal partition, because there is no right of primogeniture in this instance by reason of her sex, the author thereby intimates that a male would have had a double share.

40. In regard to what is said, that as in the instance of the Holáká,[a] a passage of revelation to this effect, "The Holáká ought to be performed", is assumed for the justification of the practice of celebrating that festival which is in use among the Práchyas; (for it can be sufficiently justified by such a passage; and one, containing the word "Práchya" or other restrictive term, need not be supposed, since such assumption is a superfluous hypothesis) so, in this case likewise, a passage of revelation in these words "Let the acquirer take a double share", must be inferred, and not one containing the word "eldest" or other restrictive term; that argument is not right; for, in the one case, the practice observed by the Práchyas can be justified by a general precept of revelation, which must be presumed to that end. It should not be alleged, that one containing the term "Práchya" must be supposed for the sake of justifying the omission of that festival by others than Práchyas. Omission, consisting in non-performance, is no fit reason for presuming a lost revelation. But, here, since Manu and the rest use the word "eldest", a passage of scripture containing that term ought to be presumed to justify its insertion; not one exhibiting the word "acquirer"; since there is no necessity for assuming this: nor is there any special authority for assuming one containing both terms. It should not be alleged,

[1] Gautama, XXVIII. 7—8. [2] Gautama, XXVIII. 9—10.
[3] Manu, IX. 134.
(a) See note to para. 22, Sec. I., Chap. VI. *infra*.

that, since it is necessary to suppose a revelation for the purpose of authorizing the acquirer's double share in other cases, that may be the origin of the law in this case also, for it is an easy conclusion, and the word "eldest" may signify the acquirer. The reverse is equally possible; for if a revelation containing the term "eldest" be supposed, even the word "acquirer" might just as well be presumed to signify eldest, since there is no ground of preference. Besides, on the same principle of economy, a supposed passage of scripture, containing three, four, or more terms, may be anyhow inferred from reasoning; and the terms of the whole law may be made to relate to it, by interpreting them according to analogy and metaphor; and thus may you demonstrate your skill in the law. Therefore, since an established practice, or a text of Smriti from which a passage of scripture is to be inferred, may be sufficiently justified by assuming a passage in which the particular practice is described, or the words of the law are contained, more should not be presumed. And such is the import of the topic of discussion on Holáká.

41. Accordingly, Vasishṭha having ordained a double share for the eldest brother, separately propounds the allotment of two shares to the acquirer. Thus after premising "Partition of heritage among brothers",[1] he says: "Let the eldest take two shares";[2] and shortly after adds: "He, amongst them, who has made an acquisition, may take a double portion of it".[3] Two shares being thus ordained by this author in right of acquisition, his direction for a double allotment to be given to the eldest brother, would be superfluous.

42. The right of taking a double share, too, is not because of mere primogeniture. Thus, Brihaspati says: "The eldest by birth, by science, and by good qualities, shall obtain a double share of the heritage, and the rest shall share alike: for he is as a father to them".[4] If the allotment of two shares were only in right of acquisition, the mention of birth, science, and good qualities, would be useless.

43. This double portion is applicable to the case of partition among whole brothers and the deduction of a twentieth part for the eldest is relative to partition among brothers of both the whole and the half blood. For Brihaspati says: "All sons of regenerate men, born of women equal by class, should share alike after giving a deduction to the eldest".[5]

44. Since partition among sons born of several wives, equal by class, is here stated as preceded by a deduction, it follows, that the doctrine of a double share relates to the case of whole brothers: and this is proper, for the elder brother has the greater importance

[1] Vasishṭha, XVII. 36.
[2] *Ibid*, XVII. 37.
[3] Vasishṭha, XVII. 42.
[4] Brihaspati, XXV. 9.
[5] Though here attributed to Brihaspati, it is ascribed to Manu in many other places. See Manu, IX. 156.

among his brothers from the circumstance of his being of the whole blood.

45. The deduction also of one in ten cows, &c., must not be made. So Manu declares: "Among brothers successful in the performance of their duties, there is no deduction of the best in ten, though some trifle, as a mark of veneration, should be given to the first-born".[1]

46. By the reasoning thus set forth, if the eldest brother have two shares of the father's estate, how should the highly venerable father, being the natural parent of the brothers, and competent to sell, give or abandon the property, and being the root of all connection with the grandfather's estate, be not entitled, in like circumstances, to a double portion of his own father's wealth? Brihaspati, extending to the eldest son the right to a double share because he is like a father, as expressed in a passage above cited, (42) does thereby intimate a maxim, that the father shall have two shares: and the maxim is actually propounded by Brihaspati, for he ordains such an allotment in general terms: "The father may himself take two shares at a partition made in his life-time".[2] So Nárada says: "Let the father, making a partition, reserve two shares for himself; and the mother shall take an equal share with her sons, if her husband be deceased".[3]

47. A father, distributing the wealth, may take two shares for himself. The construction of the sentence is not: "A father, distributing his own wealth may take two shares": for that would contradict the doctrine before stated.

48. Besides, if the father and son are to share equally the grandfather's wealth, it must be affirmed that as much as is the father's share, so much is the son's: not, that the very same effects, and same in quantity, which are the father's, are also the son's: for thus the property would be in common; and it might be concluded, that like the wealth of husband and wife, no partition thereof could take place.

49. Now, if the case were so, the eldest, together with his son, would have four shares, if two must be allotted to his son, at the same time that two are allotted to the eldest himself in right of primogeniture: and one share only would belong to another brother. Thus, if the eldest brother have many children, and equal portions must be assigned to them, as to their father, a mere trifle would remain for a younger brother, which would be in contradiction to great authorities.

50. As for the text of Brihaspati: "In wealth acquired by the grandfather, whether it consist of moveables or immoveables, the equal participation of father and son is ordained",[4] its meaning is, that the participation shall be equal or uniform, and the father

[1] Manu, IX. 115.
[2] Brihaspati, XXV. 5.
[3] Nárada, XIII. 12.
[4] Brihaspati, XXV. 3.

is not entitled to make a distribution of greater or less shares at his choice, as he may do in the instance of his own acquired wealth. It does not imply that the shares must be alike.

51. Or the text, declaratory of equal shares, may relate to a father who is himself son of two fathers.

52. The passage which declares that "the ownership of father and son is the same", has been already expounded, (§ 9, &c.).

53. Moreover, it is said, if that father be eldest, as rescuing his own father from the misery to which a childless person is doomed, it is assuredly reasonable that he should have an allotment twice as great as his own sons', in the same case in which he would have double the allotment of his brothers, because he was as a father to them; for it is through him, that his sons are connected with the hereditary property. But, if he be not the eldest son of his father, he takes only an equal share with his sons.

54. That is not accurate. For, since a share and a half, or other specific allotment, is ordained for the middlemost and other sons, it is assuredly fit that the father should have a double share, in right of paternity; and it is not proper on the part of yourself and the holy writers, to direct the equal participation of father and son in general terms.

55. Besides, the allotment of two shares to the father is not properly applicable to his own acquired wealth, as it appears from the circumstance that the distribution of it follows his choice. The precept regarding that allotment would be superfluous, since he may, at his choice, have either more or less than two or three shares. Nor can the text be restrictive; for it would contradict Vishṇu, who says: "When a father separates his sons from himself, his own will regulates the distribution. But, in the estate inherited from the grandfather, the ownership of father and son is equal".[1]

56. The meaning of this passage is, 'In the case of his own acquired property, whatever he may choose to reserve, whether half, or two shares, or three, all that is permitted to him by the law: but not so in the case of property ancestral'.

57. Accordingly, Hárita says: "A father, during his life distributing his property, may retire to the forest or enter into the order suitable to an aged man; or he may remain at home, having distributed small allotments and keeping a greater portion: should he become indigent, he may take back from them".[2]

58. By this text the father is authorised to distribute a small part, and to reserve the greatest portion of his wealth. "The order suitable to an aged man", means "the order of an ascetic".

59. As for the text of Sankha and Likhita: "If he be son of

[1] Vishṇu, XVII. 1-2.

[2] II. Cole. Dig., 205, XXIII.

one father (ekaputra,) he may allot two shares to himself",[1] the sense of it is this: The word *ekaputra* means son of one man: it is not a compound epithet signifying one who has an only son; for that mode of construction prevails less than the other. "A son of one man" is the true legitimate son. The father, being such, is entitled to a double share: not so one who is (kshetraja) issue of the soil though he be the father of the family. But the text before cited (§ 9), declaratory of the equal ownership of father and son, must be explained as intending a father who was (kshetraja) issue of the soil or wife.

60. The offspring of the soil is indeed son of two fathers. Baudháyana declares him so: "The son who is begotten by another on the authorized wife of a man, deceased, impotent, or distempered, is son of the soil. He is considered as son of two fathers, as partaking of both families, and as heir to the wealth and obsequies of both".[2]

61. The meaning of this is, that the son begotten by another person on the wife of an impotent man or the like, with the husband's consent, is termed (kshetraja) the son of the soil.

62. So Nárada says: "The produce of the seed, which is sown in a field with the permission of the proprietor, is considered as belonging to both the owner of the seed and the proprietor of the soil".[3]

63. Hence, and because the term (ekaputra) ought to be made significant in the passage in question, as an epithet of the agent in the sentence, the argument that it is vaguely used as an epithet of the subject, is refuted.

64. Besides, one who continually explains, in a vague sense, terms used by authors transcendently wise, as Manu, Gautama, Daksha and the rest, only demonstrates his own littleness.

65. Thus, the father has a double share even of wealth acquired by his own son. For the expression is general; "Let him reserve two shares"; or "he may take two shares". Kátyáyana declares it very explicitly: "A father takes either a double share, or a moiety, of his son's acquisition of wealth; and a mother also, if the father be dead, is entitled to an equal portion with the son".[4]

66. The meaning of this passage is, that the father has a right to take either a double share or a moiety of his son's acquired wealth.

67. It must not be explained thus: 'From the acquisition of both son and wealth, the father becomes entitled to two shares; but from no acquisition of a son, the owner keeps the whole'. For it is admitted, that when partition is made with brothers, one who even has not got a son, takes two shares, as the gainer of the wealth; how then can he keep the whole? It must therefore be affirmed, that, if any relative exist who is entitled to participate,

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[1] II. Cole. Dig., 216 XLIV. Baudháyana, II. 2, 3; 17 and 18.
[2] Nárada, XII. 57.
[3] Not found.

the acquirer has two shares; but, if there be none, he keeps the whole; and thus the specific mention of the father and son becomes unmeaning, like the song of a drunkard. Besides, acquisition is an act causing property; and it is a contradiction to say that it does not produce property, since it has been expressly declared to do so. Neither is it true, that a son is the property of his father. For the contrary is shown under the head of gift of the whole estate. The term 'acquisition' would be therefore metaphorical in regard to sons, and literal in respect of wealth. But that is inadmissible in the instance of a single term once uttered.[a]

68. It must not be argued, that the precept would be superfluous, since the son's right to a double share is evident because the wealth was acquired by him; and since the father's right to two shares is also deducible independently of this text, their equal participation may be thence inferred. The precept is significant: since, without this text, there is no ground for concluding a father's right to two shares of his son's wealth.

69. Besides, if the term "acquisition of wealth" be interpreted as relating to the father's wealth, his right of taking two shares, or a moiety, at his choice, would be inapplicable, for his power of taking according to his pleasure, and the exercise of his will, are unrestricted. He may choose to take a share and a half, or one and a quarter, or three quarters of one share. How then are only two cases stated? That it cannot intend a restriction nor relate to the father's own wealth has been already shown, and it is as fit that he should have a moiety of his son's acquired wealth, as it is that he should have two shares of such wealth.

70. Nor does the text intend his taking a moiety of two shares, or, in other words, a single share. For "moiety" and "share" being relative terms, imply a something of which they are parts: and, since they are equal in regard to the person and to the act of taking, they cannot relate to each other. As the interpretation, which takes the relative term "double share", in construction with "acquisition of wealth" in the ablative, is unexceptionable, it is also right to construe the word "moiety" with it; for the terms are contiguous. A moiety of the wealth, therefore, is meant; not a moiety of two shares, or in other words a single share: for it would be improper, while the obvious term, "a single share", might have been used, to employ a term, which does not express that sense. A moiety of the wealth, then, is the right interpretation.

71. Here, the father has a moiety of the wealth, acquired by his son at the charge of his estate; the son, who made the acquisition, has two shares; and the rest take one a-piece. But, if the father's estate have not been used, he has two shares; the acquirer, as many; and the rest are excluded from participation.

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[a] One of the rules of interpretation recognised in Sanskrit legal treatises that a word, once used, cannot be understood both in its literal and metaphorical senses.

72. Or else, a father, endowed with knowledge and other excellent attributes, has a right to a moiety: for an increased allotment is granted to the eldest by science and other good qualities. But one destitute of such qualities has a double share in right merely of his paternity.

73. Therefore, the meaning of the text is that a father may reserve for himself two shares of wealth which has descended in succession [from ancestors,] or of that which has been acquired by his son. He is not entitled to more, however desirous of it he may be. But, of his own acquired wealth, he may reserve as much as he pleases.

74. Among his sons, he may make the distribution, either by giving or withholding the deduction of a twentieth part of the grandfather's estate. But, if he make an unequal distribution of his own acquired wealth, being desirous of giving more to one, as a token of esteem, on account of his good qualities, or for his support on account of his numerous family, or through compassion by reason of his incapacity, or through favour by reason of his piety; the father, so doing, acts lawfully.

75. Yájñavalkya declares it: "A lawful distribution, made by the father, among sons separated with greater or less allotments, is pronounced [valid]".[1] So Brihaspati: "Shares, which have been assigned by a father to his sons, whether equal, greater, or less, should be maintained by them. Else they ought to be chastised".[2] Nárada likewise: "For such as have been separated by their father with equal, greater, or less allotments of wealth, that is a lawful distribution: for the father is the lord of all".[3]

76. Since the circumstance of the father being lord of all the wealth is stated as a reason and that cannot be in regard to the grandfather's estate, an unequal distribution, made by the father, is lawful only in the instance of his own acquired wealth. Accordingly, Vishṇu says: "When a father separates his sons from himself, his own will regulates the division of his own acquired wealth. But in the estate inherited from the grandfather, the ownership of father and son is equal".[4]

77. As a superior allotment, in the form of a deduction, is indicated by a passage of Yájñavalkya, ("When the father makes a partition, let him separate his sons according to his pleasure; and either dismiss the eldest with the best share; or, if he choose, all may be equal sharers"),[5] how is any other unequal distribution here ordained? The answer is, such cannot be the meaning, for the text would be impertinent, since a superior allotment, resulting from the deduction of a twentieth part, is admissible when partition is made by brothers after the death of the father.

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[1] Yájñavalkya, II. 117.
[2] Brihaspati, XXV. 4.
[3] Nárada, XIII. 15.
[4] Vishṇu, XVII. 1—2.
[5] Yájñavalkya II. 115.

78. Perhaps the text is propounded for the purpose of legalizing an equal distribution made by the father, without the authorized deductions? No: for then a less allotment only is declared lawful, as made by the father; and the word "greater" would be irrelevant.

79. Besides, if the mention of greater or less shares here intend the regulated deductions, the second verse of the stanza ("let him separate his sons according to his pleasure",) becomes superfluous; for that, which was to be declared, is fully specified in the three other verses of that text. But, according to our interpretation, the phrase, "let him separate his sons according to his pleasure", relates to his own acquired wealth; while the allotment of the best share, and an equal distribution, both regard an estate inherited from the grandfather. There is consequently nothing superfluous.

80. Moreover, two modes of partition after the death of the father are actually declared by Brihaspati in these words: "Partition of two sorts is ordained for co-heirs: one, in the order of seniority; the other, by allotment of equal shares".[1] By saying "in the order of seniority", the author indicates specific deductions. Equal participation is the other mode. Now, since two sorts of mutual partition among brothers are thus expressly declared, there would be no distinction between that and a distribution made by a father.

81. So Nárada says: "The father, being advanced in years, may himself separate his sons; either dismissing the eldest with the best share, or in any manner as his inclination may prompt".[2]

82. The unequal distribution, here intended, appears evidently to be different from that which consists in giving the best share to the first-born; since the author, having noticed the allotment of the best share to the eldest, again says "or as his inclination may prompt", thereby distinctly authorizing any unequal distribution which the father, for reasons before mentioned, may think proper to make.

83. But the text of Nárada, which states, that "A father, who is afflicted with disease, or influenced by wrath, or whose mind is engrossed by a beloved object, or who acts otherwise than the law permits, has no power in the distribution of the estate",[3] relates to the case where the father, through perturbation of mind occasioned by disease or the like, or through irritation against any one of his sons, or through partiality for the child of a favourite wife, makes a distribution not conformable to law. Nevertheless, unequal partition is lawful, when grounded on reasons above mentioned.

84. Thus Kátyáyana says: "But let not a father be partial to

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[1] Brihaspati, XXV. 7.
[2] Nárada, XIII. 4.
[3] Nárada, XIII. 16.

one son at a partition made in his lifetime, nor on any account exclude one from participation without sufficient cause".[1]

85. Let him not distinguish one by the allotment of a greater portion, nor exclude one from participation by depriving him of his share, without sufficient cause; for the distinguishing of sons by allotting to them the prescribed deductions extends to many and is not confined to one. One son should not be treated with particular favor without cause. But, for a sufficient reason, it may be done. Since the meaning is "even one son", the distinguishing of one has no reference to specific deduction; but intends a distribution made according to the father's mere pleasure, as before explained.

86. However, when sons request partition in the father's lifetime, an unequal allotment should not be granted by him. Manu declares it: "Among undivided brothers if there be an exertion in common, the father shall on no account make an unequal distribution in such case".[2]

87. But the regular deduction ought, in this instance, to be allowed by the father. For it is not of the nature of an unequal distribution; and the allotment of greater or less shares is alone forbidden.

88. Thus partition made by a father.

CHAPTER III.

PARTITION BY BROTHERS.

SECTION I.

Partition improper in the mother's life-time—Management of the affairs during the continuance of the family partnership—Any one co-parcener may insist on separation—Right by representation admitted as far as the third degree.

1. Partition among brothers after the death of the father is now explained. Partition is pronounced to be not lawful, among brothers of the whole blood, while the mother lives, although the ownership of wealth be vested in them by the death of their father. For the text ("after the father and the mother", &c.) propounds a division of the paternal estate among brothers of the whole blood subsequent to the death of both parents.

2. It does not intend a distribution of the mother's wealth after her death. For partition of the patrimony only is suggested by the term 'paternal', and there is no authority for interpreting it parental.

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[1] II. Cole. Dig., 207, XXVII. [2] Manu, IX. 215.

3. Besides, it would be a repetition: for the division of the maternal estate, on the death of the mother, is subsequently noticed by Manu in a separate text.

4. Thus Yájñavalkya says: "Let sons divide equally the effects and the debts, after the death of both parents. But daughters share the residue of their mother's property, after payment of her debts; and the issue in default of daughters".[1]

5. Since the latter half of this passage shows that sons have no right of participation in the mother's wealth, if daughters exist, but, if none exist, then sons have the right of succession, being intended by the term "issue", the father's estate only can be meant in the former half of the text, by the word "parents": for, otherwise, there would be tautology.

6. The author, declaring that brothers may divide after the death of the father and the mother, propounds a time subsequent to the death of both as a fit period of partition; and the death of both is required as a condition.

7. Accordingly Sankha and Likhita say: "Since the family is supported on the inheritance, sons are not independent, but, as it were, under the authority of a father, so long as the mother lives".[2] They are not independent of their mother; they are not competent to make a partition.

8. Vyása very explicitly declares it: "For brothers, a common abode is ordained, so long as both parents live: but, after their death, religious duties of separated brothers increase".[3]

9. Since the author forbids the separation of brothers by commanding them to live together and prohibits partition with one whose father and mother are living, the association of their survival is not positively intended in the phrase "so long as both parents live". Therefore, if one parent be living, partition is not lawful; but it is so, when both are dead.

10. Thus Brihaspati says: "On the death of both parents, partition among brothers is allowed: and, even while they are both living, it is right if the mother be past child-bearing".[4]

11. Since partition while the mother is living cannot be relative to the mother's peculiar property, and since the authorized partition after the death of both parents, which is indicated by the particle in the phrase, "even while they are both living", is thus pronounced to be proper, partition among brothers after the death of parents is evidently relative to the father's wealth.

12. Accordingly Vyása propounds partition, in the mother's life-time, made with reference chiefly to her: "If there be many sons of one man, by different mothers, but equal in number, and

[1] Yájñavalkya, II. 118.
[2] II. Cole. Dig., 203, XVII.
[3] II Cole. Dig., 284, CXIII.
[4] Brihaspati, XXV. 1.

alike by class, a distribution among the mothers is approved".[1] So Brihaspati says: "If there be many sprung from one, alike in number, and in class, but born of rival mothers, partition must be made by them, according to law, by the allotment of shares to the mothers".[2]

13. Since there is no difference in the sons' shares, for they are equally numerous and of the same class, partition is to be made by an allotment to the mothers, not to the sons. Therefore, as in the case of other wealth of the mothers', so in this instance sons have not independent power to make a partition among themselves, while the mother lives; but, with her consent, the partition is lawful.

14. Hence, what is said by Gautama and others ("In partition there is increase of religious merit"[3]) must be understood to apply after the death of the mother.

15. If then they desire to remain unseparated, the eldest brother, being capable of the care and management of the estate, may take the whole; and the rest should live under him, as under a father. Thus Manu says: "The eldest brother may take the patrimony entire; and the rest may live under him as under their father".[4] So Gautama: "Or the whole may go to the first-born; and he may support the rest as a father".[5] From the particle "or" it appears, that they may either become separate or continue to dwell together; and their dwelling together must be by consent of all. Thus Nárada says: "Let the eldest brother, by consent, support the rest like a father; or let a younger brother, who is capable, do so. The prosperity of the family depends on ability".[6] Even the youngest, being capable, may govern all the brothers. The middlemost, of course, may, being here inferred by the analogy of the loaf and the staff.[a]

16. But partition takes place by the will of any one, as before intimated.

17. Accordingly Kátyáyana, treating of partition, says: "Let them deposit, free from disbursement, in the hands of kinsmen and friends, the wealth of such as have not attained majority, as well as of those who are absent".[7] So a text states: "The property of minors should be so preserved until they attain their full age".

18. The rule of distribution among sons extends equally to them and to grandsons and great-grandsons in the male line. There

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[1] Not found.
[2] Brihaspati, XXV. 15.
[3] Gautama, XXVIII. 4.
[4] Manu, IX. 105.
[5] Gautama, XXVIII. 3.
[6] Nárada, XIII. 5.
[7] II Cole. Dig., 242, LXXX.

[a] *The analogy of the loaf and the staff.*—A person who carries away a staff necessarily carries away with it the loaf which is inseparably attached to the staff. The expression therefore means "necessarily" or '*a fortiori*'. This expression is used in the same sense in other legal treatises.

is not here an order of succession following the order of proximity according to birth. For these three persons, the son, grandson and great-grandson, do not differ, in regard to the presenting of two oblations at solemn obsequies, one which it was incumbent on the ancestor to present, and the other which is to be tasted by his manes. Hence it is that Devala says: "A father, a grandfather, and a great-grandfather, assiduously cherish a new-born son, as birds cherish the holy fig-tree, [reflecting] 'he will give to us the śráddha with honey, meat, and herbs, with milk, and with rice and milk, in the season of rains, and under the asterism Maghá'".[1] So Sankha, Likhita and Yama: "A father, a grandfather, and a great-grandfather, welcome a new-born son, as birds welcome the holy fig-tree, [reflecting] 'he will propitiate us with honey and meat, and [especially the flesh of] the rhinoceros, and with milk, and with rice and milk, in the season of rains, and under the asterism Maghá'".[2] From the mention of the great-grandfather, it appears, that "son" here intends a descendant as low as great-grandson. Thus, since such a descendant confers benefits on his ancestors up to the great-grandfather, by presenting oblations to the manes, the descendant within the degree of great-grandson has an equal right of inheritance.

19. Hence it is, that the son and grandson, whose own fathers are living, have no right of succession; for they do not present oblations to the manes, since they are incompetent to perform obsequies.

20. After the death of parents, the special distribution, made by a father, cannot have effect among brothers. But all the rest, as before explained, must be here again admitted.

21. If there be one son living, and sons of another son, then one share appertains to the surviving son, and the other share goes to the grandsons, however numerous. For, their interest in the wealth is founded on their relation by birth to their own father; and they have a right to just so much as he would have been entitled to.

22. The text which states: "Among sons of different fathers, the allotment of shares is according to the fathers",[3] does not relate to this case. For the whole estate belonged to the uncle's father, and therefore the whole would belong to him, and no part of it, to his nephews. Or, if partition is to be made as between father and son, under the direction for the allotment of shares according to the fathers, the uncle would have two shares, because a father has a right to a double portion: and the nephews would have a single share. But this is contrary to the approved usage of the wise.

23. The purport of the text, however, is this. If there be numerous sons of one brother and a few sons of another, then the allotment of shares is according to the fathers.

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[1] II. Cole. Dig., 242, LXXX. [2] Not found.
[3] Yájñavalkya, II. 121.

SECTION II.

Partition with or without specific deductions—Provision for the mother, and for the sister.

24. Now two modes of partition among brothers alike by class are propounded; namely, either with specific deductions of a twentieth and so forth, or else an equal division.

25. Hárita ordains an equal distribution without deductions, in the following passage, after speaking of a father; "If he be dead, the partition of inheritance should be made equally".[1] So Usanas says: "This rule of partition is declared for brothers of various castes being born of women of classes below the father's; but the distribution among brothers born of women of the same class is ordained to be made equally".[2] Thus Paithínisi says: "When the paternal inheritance is to be divided, the shares shall be equal".[3] Yájñavalkya also declares: "Let the sons divide equally the effects and the debts, after the death of both parents".[4] Thus, there are two modes of distribution; namely, with or without specific deductions.

26. It must not be argued, that the practice of equal partition is indispensable, as the only mode authorized by law. For the brothers may consent to the deductions by reason of veneration. An option exists as in the case of making or omitting partition.

27. Accordingly, since persons of the present day entertain no veneration, equal distribution is alone seen in the world; as also because elder brothers deserving of deductions are now rare.

28. If one of the co-heirs, through confidence in his own ability, decline his share of the wealth inherited from the father, grandfather or other ancestor, something should be given to him, be it only a prastha[a] of rice, on his separation, for the purpose of obviating any future cavil on the part of his son or other heir. Thus Manu says: "If any one of the brothers has a competence from his own occupation and desires not the property, he may be excluded from his share, giving him some trifle in lieu of a maintenance".[5] So Yájñavalkya: "The separation of one who is able to support himself, and is not desirous of participation, may be effected by giving him some trifle".[6]

29. When partition is made by brothers of the whole blood, after the death of the father, an equal share must be given to the mother. For the text states: "The mother should be made an equal sharer".[7]

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[1] Not found.
[2] II. Cole. Dig., 234, LXXII.
[3] Not found.
[4] Yájñavalkya, II. 118.
[5] Manu, IX. 207.
[6] Yájñavalkya, II. 117.
[7] Brihaspati, XXV. 64.

[a] Prastha means "eight handfuls". According to Apte, it is a particular measure of capacity equal to thirty-two palas.

30. Since the term 'mother' intends the natural parent, it cannot also mean a step-mother. For a word once employed cannot bear the literal and metaphorical senses at the same time.

31. The equal participation of the mother with the brothers takes effect, if no separate property had been given to the woman. But, if any have been given, she has a half. And, if the father makes an equal partition among his sons, all the wives must have equal shares with his sons. So Yájñavalkya declares: "If he make the allotments equal, his wives, to whom no separate property has been given by their husband, or their father-in-law, must be rendered partakers of like portions".[1] "To a woman, whose husband marries a second wife, let him give an equal sum, as a compensation for the supersession, provided no separate property have been bestowed on her: but, if any have been assigned, let him allot half".[2]

32. Wives of the father who have no male issue, not those who are mothers of sons, [must be rendered] equal sharers [with the sons]. So Vyása ordains: "Even childless wives of the father are pronounced equal sharers; and so are all the paternal grandmothers: they are declared equal to mothers".[3] Vishṇu likewise says: "Mothers receive allotments according to the shares of sons; and so do unmarried daughters".[4]

33. According to the shares of sons]; as sons are entitled to four shares, three, two or one, in the order of the classes, so are the wives also.

34. Unmarried daughters, likewise, following the allotments of sons, take a quarter thereof. Thus Brihaspati says: "Mothers are equal sharers with them; and daughters are entitled to a fourth part".[5]

35. A son has three parts and a daughter one. So Kátyáyana declares: "For the unmarried daughter a quarter share is allowed and three parts belong to the son. But the right of the owner is admitted when the property is small".[6]

36. If the funds be small, sons must give a fourth part to daughters, deducting it out of their own respective shares. Thus Manu says: "To the maiden sisters let their brothers give portions out of their own allotments respectively: let each give a fourth part of his own distinct share: and they, who refuse to give it, shall be degraded".[7]

37. Let each give]; from the mention of giving, and the denunciation of the penalty of degradation if they refuse, it appears that portions are not taken by daughters as having a title

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[1] Yájñavalkya, II. 116.
[2] Do II. 149.
[3] II. Cole. Dig., 243, LXXXIV.
Vishṇu, XVIII, 34 and 35.
[5] Brihaspati, XXV. 64.
[6] II. Cole. Dig., 297, CXXVI.
[7] Manu, IX. 118.

to the succession. For one brother does not give a portion out of his own allotment to another brother who has a right of inheritance.

38. Thus Yájñavalkya, saying "Uninitiated brothers should be initiated by those for whom the ceremonies have been already performed; but sisters should be disposed of in marriage, giving them as an allotment, a fourth part of a brother's own share",[1] declares the obligation of disposing of them in marriage, not their right of succession.

39. Thus if the wealth be great, funds sufficient for the nuptials should be allotted. It is not an indispensable rule that a fourth part shall be assigned.

40. This must be understood as applicable, only where the number of sons and daughters is equal. For if the number be unequal, either the daughter would have a greater portion or the son would be entirely deprived of property. But that cannot be proper, since the son is chief in rank.

41. It is stated as an objection, that as the defraying of the nuptials of a sister is an indispensable obligation under the text of Nárada, which states: "If no wealth of the father exist, the ceremonies must, without fail, be defrayed by brothers already initiated, contributing funds out of their own portions",[2] the impoverishment of the brothers is no exceptionable consequence.

42. That is wrong. For the text is intended to provide for initiatory ceremonies of brothers; and the reading of it which expresses, that "the ceremonies of brothers must be defrayed by those who are already initiated", is unauthentic; and the initiation of a brother was the subject treated of. It had been already said, "For those, whose forms of initiation have not been regularly performed by the father, these ceremonies must be completed by the brothers out of the patrimony".[3] Here the pronouns "those" and "whose" are in the masculine gender. But this text immediately precedes the one before cited ("If no wealth of the father exist, &c."). That passage therefore relates to the initiation of brothers.

43. Thus, partition of the wealth of the father, grandfather or other ancestor.

CHAPTER IV.

Succession to Woman's Property.

SECTION 1.

Separate property of a woman defined and explained.

1. In the next place, for the purpose of explaining the distribution of a woman's separate wealth, such property is first described. On this subject, Vishnu says: "What has been given to a woman

[1] Yájñavalkya, II. 125. [2] Nárada, XIII. 34. [3] Nárada, XIII. 33.

by her father, her mother, her son, or her brother, what has been received by her before the nuptial fire, what has been presented to her on her husband's espousal of another wife, what has been given to her by kindred, as well as her perquisite, and a gift subsequent, are a woman's separate property".[1]

2. Kátyáyana defines a gift subsequent: "What has been received by a woman from the family of her husband at a time posterior to her marriage, is called 'a gift subsequent'; and so is that which is similarly received from the family of her kindred. Whatever is received by a woman after her nuptials, either from her husband or from her parents, through the affection of the giver, Bhrigu pronounces to be a gift subsequent".[2]

3. By the word "kindred" her father and mother are denoted. Hence, the meaning is this: anything received subsequently to the marriage, from persons who are related through the father or the mother, or from those two parents themselves; or so received from the husband or from his family, namely, her father-in-law and the rest, is a gift subsequent. But the term 'kindred', in the text of Vishṇu, intends maternal uncles and others; for the father and the rest are specified by the appropriate terms: either the husband, or the parents, inherit that which was received at the time of the nuptials, according to the difference between marriages denominated Bráhma, &c., and those called Asura and so forth.

4. Manu and Kátyáyana describe the separate property of a woman: "What was given before the nuptial fire, what was presented in the bridal procession, what has been conferred on the woman through affection, and what has been received by her from her brother, her mother, and her father, are denominated the sixfold property of a woman".[3] So Nárada says: "What was given before the nuptial fire, what was presented in the bridal procession, her husband's donation, and what has been given by her brother and either of her parents, is termed the sixfold property of a woman".[4]

5. Kátyáyana explains this: "What is given to a woman at the time of her marriage, near the nuptial fire, is declared by the wise as the woman's peculiar property bestowed before the nuptial fire. That again, which a woman receives while she is conducted from the parental abode, is instanced as the separate property of a woman, under the name of gift presented in the bridal procession".[5]

6. Since the term "parental" is derived from a compound expression, of which one member only is retained, the presents which she receives from the family of either her father or her mother, while she is conducted to the house of her husband, are gifts presented in the bridal procession.

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[1] Vishnu, XVII. 18.
[2] II. Cole. Dig., 587, VIII. CCCCLX.
[3] Manu, IX. 194, and II. Cole. Dig., 584, CCCCLXII.
[4] Nárada, XIII. 8.
[5] II. Cole. Dig., 585, CCCCLXIV., and—V

7. "Her husband's donation" (dáya) is wealth given (datta) to her by her husband. For Manu and others notice that which is given (datta) to her by him, without mentioning his donation (dáya) and Nárada specifies donation (dáya) without any separate notice of what is given (datta).

8. In other instances also, "husband's donation" is used for wealth given by the husband. Thus Kátyáyana says, "Let the woman enjoy her husband's donation as she pleases, when he is dead: but, while he lives, she should carefully preserve it, or else commit it to the family".[1]

9. The meaning of the passage is this: wealth given to her by her husband, she may dispose of, as she pleases, when he is dead; but, while he is alive, she should carefully preserve it. This is intended as a caution against extravagance.

10. So the text of Vyása, concerning the limits of the wealth which may be given by her husband: "A present, amounting to two thousand panas at the most, may be given to a woman, out of the wealth: and whatever property is given to her by her husband, let her use as she pleases".[2] As far as two thousand panas a present may be given to a woman, but not more. In answer to the question by whom given? the construction refers to the word 'husband' contained in the text; and one not contained in it must not be assumed. Thus the term (déya) 'may be given' retains the literal sense of the verb (dá) 'to give'. But, since so much as is her deceased husband's estate, belongs to the widow, the sense becomes metaphorical and that is not reasonable.

11. And whatever property is given to her by her husband, let her use as she pleases. Hence the alleged conclusion, that the widow is competent to take so much of the property of her husband, who has died leaving no male issue, as amounts to two thousand panas, and not the whole estate, must be rejected by the wise.

12. This also will be discussed at full length later on.

13. Yájñavalkya says: "What has been given to a woman by the father, the mother, the husband or a brother, or received by her before the nuptial fire, or presented to her on her husband's marriage to another wife, is denominated a woman's property".[3]

14. That wealth, which is given to gratify a first wife by a man desirous of marrying a second, is a gift on a second marriage: for its object is to obtain another wife.

15. So Devala says: "Her subsistence, her ornaments, her perquisite, and her gains, are the separate property of a woman. She herself exclusively enjoys it; and her husband has no right to use it, unless in distress".[4]

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[1] II. Cole. Dig., 595, CCCCLXXVIII.
[2] „ do. 600, CCCCLXXXII.
[3] Yájñavalkya, II. 144.
[4] II. Cole. Dig., 597, CCCCLXXVIII.

16. Vyása also: "Whatever is presented at the time of the nuptials to the bridegroom, intending the benefit of the bride, belongs entirely to the bride, and shall not be shared by kinsmen".[1]

17. Intending] designing that it shall appertain to the bride. It is not meant, that the property becomes hers, even without such intention. Accordingly the time of nuptials is here stated illustratively; and not as the sole motive. For the will of the giver is the cause of property. So the following authentic text does not specify that it must be at the time of the nuptials: "What is presented to the husband of a daughter, goes to the woman, whether her husband live or die; and, after her death, descends to her offspring". Here the giver's intention is not specified; because it is implied by the word 'daughter'.

18. Since various sorts of separate property of a woman have been thus propounded without any restriction of number, the number *six* is not definitely meant. But the texts of the sages merely intend an explanation of woman's separate property. That alone is her peculiar property, which she has power to give, sell, or use, independently of her husband's control.

19. Kátyáyana expresses this rather concisely: "The wealth, which is earned by mechanical arts, or which is received through affection from any other, is always subject to her husband's dominion. The rest is pronounced to be the woman's property".[2]

20. Over that, which has been received by her "from any other" but the family of her father, mother, or husband, or has been earned by her in the practice of a mechanical art, her husband has dominion and full control. He has a right to take it, even though no distress exist. Hence, though the wealth be hers, it does not constitute woman's property; because she has not independent power over it.

21. But, in other descriptions of property excepting these two, the woman has the sole power of gift, sale or other alienation. So Kátyáyana declares: "That which is received by a married woman or a maiden, in the house of her husband or of her father, from her husband or from her parents, is termed the gift of affectionate kindred. The independence of women, who have received such gifts, is recognised in regard to that property; for it was given by their kindred to soothe them, and for their maintenance. The power of women over the gifts of their affectionate kindred is declared both in respect of gift and of sale according to their pleasure, even in the case of immoveables".[3]

22. What is obtained from kind relations, is the gift of affectionate kindred.

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[1] Not found.

[2] II. Cole. Dig., 589, CCCCLXX.

[3] II. Cole. Dig., 594, CCCCLXXV.

23. But in the case of immoveables bestowed on her by her husband, a woman has no power of alienation by gift or the like. So Nárada declares: "What has been given by an affectionate husband to his wife, she may consume as she pleases, when he is dead, or may give it away, excepting immoveable property".[1] It follows from the specific mention of "given by a husband", that any other immoveable property, except such as has been given to her by him, may be alienated by her. Else the preceding passage concerning the power of women in respect of gift and of sale, "according to their pleasure, even in the case of immoveables", would be contradicted.

24. However, if the husband have no means of subsistence, without using his wife's separate property, in a famine or other distress, he may take it under such circumstances: but not in any other case. So Yájñavalkya declares: "A husband is not liable to make good the property of his wife, taken by him in a famine, or for the performance of a duty, or during illness, or while under restraint".[2] Kátyáyana, again, denies the right of the husband to do so under any other circumstances: "Neither the husband, nor the son, nor the father, nor the brothers, can assume the power over a woman's property to take it or to bestow it. If any one of these persons by force consume the woman's property, he shall be compelled to make it good with interest, and shall also incur a fine. If such person, having obtained her consent, use the property amicably, he shall be required to pay the principal, when he becomes rich. But, if the husband have a second wife and do not show honor to his first wife, he shall be compelled by force to restore her property, though amicably lent to him. If food, raiment and dwelling be withheld from the woman, she may exact her due and take a share with the co-heirs".[3]

25. If the husband, having taken the property of his wife, live with another wife and neglect her, he shall be compelled to restore the property taken by him. If he do not give her food, raiment, and the like, that also may be exacted from him by the woman.

26. Thus a definition of woman's property has been propounded.

SECTION II.

Succession of a woman's children to her separate property.

1. Now partition of woman's property is explained. On that subject Manu says: "When the mother is dead, let all the uterine brothers and the uterine sisters equally divide the maternal estate".[4]

2. Since this suggests the participation of brother and sister,

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[1] II. Cole. Dig., 595, CCCCLXXVI.
[2] Yájñavalkya, II. 148.
[3] II. Cole. Dig., 594, CCCCLXXV, and 599, CCCCLXXXI.
[4] Manu, IX. 192.

connected in the sentence by reciprocation, although the conjunctive compound do not there occur, by means however of the conjunctive particle, which bears the same import, the meaning of the passage must be this; 'Let sisters and brothers of the whole blood share the estate'.

3. Brihaspati likewise implies such combination from the use of the particle *cha*: "A woman's property goes to her children; and the daughter is a sharer with them, provided she be unaffianced; but, if married, she shall not receive the maternal wealth".[1]

4. Here the term 'children' intends sons: and they share their mother's wealth with unbetrothed daughters. So Sankha and Likhita say: "All uterine brothers are entitled to the wealth equally; and so are unmarried sisters".[2]

5. Since the son is mentioned first in all these passages, he has a right to the succession to his mother's wealth, whatever be his state, and the conjunctive particle which likewise occurs in every one of those texts, denotes combination.

6. A passage of Devala necks out even one who is armed with these arguments. It is as follows: "A woman's property is common to her sons and unmarried daughters, when she is dead; but if she leave no issue, her husband shall take it, her mother, her brother, or her father".[3]

7. Here it is expressly declared, that the mother's wealth is common to the son and unmarried daughter: and if the maiden daughter were exclusively entitled to the whole of her mother's estate, the special texts of Manu and others, concerning the wealth given at the nuptials, would be unmeaning, since she would have the right in all cases indiscriminately.

8. But, if one should propose this solution: 'The ordaining of equal partition is fit, if the brother and sister have alike a right of succession to their mother's property; but, if sisters only inherit equally, or, on failure of them, brothers only, the declaration of equality would be superfluous, since it might be deduced, without such declaration, from reasoning, because no exception to it has been specified': he might be thus answered. 'It is no less superfluous to declare equality, on the assumption that brother and sister inherit; since their parity may be in like manner deduced from reasoning. Besides, how is it superfluous? since, in the case of brothers inheriting alone, the term "equal" is unquestionably pertinent, as it obviates the supposition that deductions of a twentieth and the like shall be allowed in the instance of the mother's estate, as in that of the father's.' Therefore, the half learned person must be disregarded by the wise, as unacquainted with the letter of the law and with reasoning.

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[1] Brihaspati, XXV. 87. [2] II. Cole. Dig., 603, CCCCLXXXVIII.
[3] II. Cole. Dig., 603, CCCCLXXXIX.

9. For the reason above stated, the son and the maiden daughter have a like right of succession. On failure of either of them, the wealth belongs to the other. On failure of both of them, the succession devolves, with equal rights, on the married daughter who has a son, and on her who may have male issue. For, by means of their sons, they may present oblations at solemn obsequies.

10. Hence, the daughter's son is entitled to the property, on failure of the daughters above described: for the text of Manu states: "Even the son of a daughter delivers him in the next world, like the son of a son".[1] Neither a barren nor a widowed daughter inherits; for these present no oblations at solemn obsequies, either in person or by means of their offspring. Accordingly Nárada says, "On failure of the son, the daughter inherits; for she equally continues the lineage".[2]

11. But, if there be a son's son and a daughter's son claiming the succession, the son's son has the exclusive title; for it is reasonable, since the married daughter is debarred from the inheritance by the son, that the son of the debarred daughter shall be excluded by the son of the person who bars her claim.

12. On failure of all these above mentioned, including the daughter's son, the barren and the widowed daughters both succeed to their mother's property; for they also are her offspring; and the right of others to inherit is declared to be on failure of issue.

13. But the text of Gautama, "A woman's separate property goes to her daughters unaffianced, and to those not actually married";[3] that of Nárada, "Let daughters divide their mother's wealth; or, on failure of daughters, her male issue";[4] a passage of Kátyáyana, "But, on failure of daughters, the inheritance belongs to the sons";[5] as also one of Yájñavalkya, "Daughters share the residue of their mother's property, after payment of her debts; and the male issue succeeds in their default";[6] relate only to the wealth given at nuptials; for these passages contradict the text of Devala above cited (§ 6). Accordingly Manu says, "Property given to the mother on her marriage (yautaka) is the share of her unmarried daughter".[7]

14. Here *yautaka* signifies property given at a marriage: the word *yuta*, derived from the verb *yu* (to mix), imports "mingling"; and mingling is the union of man and woman as one person; and that is accomplished by marriage. For a passage of scripture states: "Her bones become identified with his bones, flesh with flesh, skin with skin". Therefore what has been received at the time of the marriage is denominated *yautaka*.

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[1] Manu, IX. 139.
[2] Nárada, XIII. 50.
[3] Gautama, XXVIII. 22.
[4] Nárada, XIII. 2.
[5] II. Cole. Dig., 607, CCCCXCIII.
[6] Yájñavalkya, II. 118.
[7] Manu, IX. 131.

15. Accordingly [since the term signifies wealth received at the time of the marriage], Vasishṭha says, "Let the females share the nuptial presents (párinâyya) of their mother".[1] For *párinâyya* signifies wealth received at a marriage (parinayana).

16. As for a passage of Manu, "The wealth of a woman, which has been in any manner given to her by her father, let the Bráhmini damsel take; or let it belong to her offspring";[2] since the text specifies "given by her father", the meaning must be, that property, which was given to her by her father, even at any other time besides that of the nuptials, shall belong exclusively to her daughter: and the term 'Bráhmini' is merely illustrative [indicating that a daughter of the same caste with the giver inherits]. Or, lest the term should be impertinent, the text may signify that the Bráhmini damsel, being daughter of a contemporary wife, shall take the property of the Kshatriyá and of other wives dying childless, which had been given to them by their fathers. The precept, which directs, that "the property of a childless woman shall go to her surviving husband" does not here take effect. Such is the meaning of the passage; for, else all the texts would be incongruous.

17. It must not be argued that the succession of the daughter's sons, on failure of the daughter, is shown by Nárada and others, because the word "issue" is connected in construction with "daughter", which is the nearest term. For the word "daughter", as signifying a distinct progeny, requires a parent for its correlative and must not be connected in construction with "son" another progeny suggested by the term "issue": since [both terms] alike need a correlative indicating the parent.

18. Nor should [the word] "issue" be expounded metaphorically, from the appropriate sense, [as signifying male, and "daughter" female, neglecting the relation to a parent indicated by these terms]. For all the terms [*viz.*, "daughter", repeatedly occurring in various texts; or "issue", or other equivalent word; or "daughter, and issue", and, in the text of Kátyáyana, "son"] may be taken in their literal acceptation by connecting them with "mother": and the word "daughter" is acknowledged to bear the literal sense as connected with the term "mother".

19. Neither should the construction of the sentence be alleged to be 'issue of the daughter' suggested by the pronoun in the phrase "her issue". For the pronoun would refer to her as daughter, [not as mother]; since the meaning of the original term is such.

20. Besides, the word "daughter", in the text of Yájñavalkya having the termination of the first or nominative case, and the pronoun ("their") having that of the fifth (ablative), cannot be connected with the term "issue", by construction which requires the sixth or relative case. But this term governs the word "mother"

[1] Vasishṭha, XVII. 40. [2] Manu, IX. 198.

notwithstanding the intervention of mediate terms. Thus then, with the certainty that "issue of the mother" is here intended, it is reasonable to interpret "issue of the mother" in the texts of Nárada and Kátyáyana: for there can be no contradiction.

21. Moreover, conformably with the text of Baudháyana: "Male issue of the body being left, the property must go to them";[1] and because of nearer kinship it is reasonable that the son born of her body should have the right of succession to his mother's property, and not the daughter's son, who is a mediate descendant not born of her person.

22. Hence a woman's separate property, received by her at her nuptials, goes to her daughters and not to her sons and the text of Gautama is intended to explain the order of succession in this case.

23. First, the woman's property goes to her unaffianced daughters. If there be none such, it devolves on those who are betrothed. In their default, it passes to the married daughters. For the right of the female issue generally is suggested by the term "daughters" [in Gautama's text, § 13]; and the special mention of "unaffianced" and "unmarried", which follows, is pertinent as declaratory of the order of succession.

24. Thus, Yájñavalkya: "The separate property of a childless woman married in the form denominated Bráhma or in any of the four [unblamed forms of marriage] goes to her husband: but, if she leave progeny, it will belong to her daughter: and in other forms of marriage, [as the Asura, &c.,] it goes to the father".[2]

25. Here, in certain forms of marriage termed Bráhma, &c., what has been received by a woman at the nuptial fire goes, after her death, first to her daughters. Again, the right devolves first on the maiden daughter; if there be none, it descends to the betrothed daughter; or for want of such, it goes to a married daughter; or, on failure of all daughters, it devolves on the son. For the husband's right of succession is relative to property of a wife who leaves no issue whatever.

26. The right of the married daughter, too, on failure of the unaffianced one and the rest, has been hinted by Brihaspati using the term "unaffianced" (§ 3).

27. It should not be alleged, that this text does not relate exclusively to wealth received at nuptials, but is applicable to any property, whether obtained then or at any other time, and appertaining to a woman espoused by such forms of marriage. For, the preceding passage would have no pertinency, and it would disagree with Manu; for he says: "It is admitted that the property of a woman married by the ceremonies called Bráhma, Daiva, Ársha, Gándharva and Prájápatya, shall go to her husband, if she die

[1] Not found.

[2] Yájñavalkya, II. 146.

without issue. But her wealth, given to her on her marriage in the form called Asura or either of the other two (Rákshasa and Paisácha,) is ordained, on her death without issue, to become the property of her mother and of her father".[1] Here, the subsequent term, "wealth given to her", is understood in the preceding sentence. Therefore, by thus connecting the terms, "wealth given to her at the nuptial ceremonies, &c.," the text appears to relate to property received at her marriage, and not generally to any property whatever.

28. So Yama, saying 'wealth, which is given at the marriage called Ásura, &c.', appears to intend nuptial presents exclusively: that is, wealth which is given while the marriage ceremony lasts, having been commenced but not being finished.

29. It must not be argued, that the denominations of Bráhma, &c., regard the woman and that the text concerns any property belonging to her, the designations being relative to the person: because there is no other rule provided for the descent of a childless woman's property received by her before her nuptials, or after them. For the rule of succession, in the case of property received before or after marriage, will be fully stated, conformably with express laws.

SECTION III.

Succession to the separate property of a childless woman.

1. The heirs of the property of a woman who dies childless are next propounded.

2. "The separate property of a childless woman married in the form denominated Bráhma, or in any of the four [unblamed forms of marriage,] goes to her husband."[2]

3. The four forms of marriage, at the head of which is that called Bráhma, are here intended. Those four are the Daiva, Ársha, Prájápatya, and Gándharva. With the Bráhma, they make five. For Manu has specified five: namely, "the ceremonies called Bráhma, Daiva, Ársha, Gándharva and Prájápatya".[3] Wealth, which has been received by a woman while her marriage in any of those forms is celebrated, devolves on her husband, if she die without issue. Here "issue" signifies progeny.

4. It is not right to interpret the text as signifying that any property of whatever amount, which belongs to a woman married by any of those ceremonies termed Bráhma, &c., whether received by her before or after her nuptials, devolves wholly on her husband by her death. For the terms employed in the text (§ 2), signifying 'at marriages in the form denominated Bráhma, &c.', indicate time: and, if the term 'Bráhma, &c.', intended the woman, those

[1] Manu, IX. 196 and 197.
[2] Yájñavalkya, II. 146.
[3] Manu, IX. 196.

terms would have been exhibited in the singular number and sixth or relative case: for the pronoun denoting, the woman, is exhibited in that case and number, in the passage; "But her wealth, given to her on her marriage, &c." If the time of nuptials be indicated, the term has the metaphorical sense from relation to the present [time]. But, if the woman be intended, it has the metaphorical meaning from relation to the past ceremony of marriage. Now, this, being a less approved mode of construction, is not the proper one. Neither is it true, that the terms 'Bráhma,' &c., do signify the woman who is espoused; for they are used by Manu and the rest as importing the marriage celebrated in such forms. Thus Manu having premised these words: "Now learn compendiously the eight forms of the nuptial ceremony";[1] enumerates "the ceremony of Bráhma, of the Devas, of the Rishis, of the Prájápatis, of the Asuras, &c."[2] So Nárada says: "Eight forms of marriage are ordained for the perfecting of the several classes: the first of them is the Bráhma".[3] Vishṇu in like manner says, "Marriages are of eight sorts, the Bráhma, the Daiva, &c."[4]

5. Therefore the observation of Visvarúpa, that the text relates to woman's property received at the time of the nuptials, should be respected.

6. But a woman's property, received at a marriage in the form called Asura and the like, her mother may take on her death, though her husband be living; and, on failure of the mother, the father. For that order of succession results from the text: "Her wealth is ordained to become the property of her mother and of her father".[5] If then joint succession were intended, the author would have said, "become the property of her two parents". And, as the father's right of inheritance is declared to be on failure of the mother in the case of a maiden's property, the same is fitting in this instance also.

7. Accordingly Baudháyana says, "The wealth of a deceased damsel, let the uterine brothers themselves take. On failure of them, it shall belong to the mother; or, if she be dead, to the father".[6]

8. The property of a maiden has been thus explained.

9. It must not be argued that in this case, as in that of a maiden's property, the brother has the prior right. For no text ordains it: and the succession of the mother and father only is expressly declared.

10. But wealth received by a woman after her marriage, from the family of her father, or her mother, or of her husband, goes to her brothers, as Yájñavalkya declares: "That which has been given

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[1] Manu, III. 20.
[2] *Ibid*, III 21.
[3] Nárada, XII. 39.
[4] Vishṇu, XXIV. 11.
[5] Manu, IX. 197.
[6] Not found.

to her by her kindred, as well as her fee or gratuity, and anything bestowed after marriage, her kinsmen take, if she die without issue".[1]

11. Given by her kindred] presented to her by her father or mother. Hence their sons, who are her brothers, are the kinsmen here signified.

12. That is confirmed by Vriddha Kátyáyana, who says: "Immoveable property, which has been given by parents to their daughter, goes always to her brother, if she die without issue".[2] For it appears, that the brother's right of succession is founded simply on her leaving no issue.

13. The remark of Visvarúpa, that the property of a childless woman married in any form, from that of Bráhma to that of the Paisáchas, goes to her brother, should therefore be respected.

14. Under the term "immoveables", the same must be true of other property by the argument *a fortiori*, exemplified in the loaf and staff.(a)

15. By the phrase "given by her kindred" (§ 10) is signified that which was given to her by her parents during her maiden state. For any thing received by her, subsequently to her nuptials, is comprehended under the denomination of (anvádheya) 'gift subsequent': and either the husband, or the parents, inherit that which was presented at the time of the wedding.

16. Kátyáyana describes a gift subsequent: "What has been received by a woman from the family of her husband, and at a time posterior to her marriage, is called a gift subsequent; and so is that which is similarly received from the family of her kindred".[3]

17. From the family of her husband] from her father-in-law and the rest. From the family of her kindred] from that of her father and mother.

18. The same author gives another definition: "Whatever is received by a woman after her nuptials, either from her husband, or from her parents, through the affection of the giver, Bhrigu pronounces to be a gift subsequent".[4]

19. He likewise explains the fee or perquisite (sulka). "Whatever has been received, as a price of labour, furniture and carriages, milking vessels and ornaments, is denominated sulka."[5]

20. What is given to a woman by artists constructing a house or executing other work, as a bribe to send her husband or other person to labour on such particular work, is her fee. It is the price since its purpose is to engage.

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[1] Yájñavalkya, II. 145.
[2] II. Cole. Dig., 618, DIX.
[3] „ do. 587, CCCCLXVIII.
[4] II. Cole Dig., 587, CCCCLXVIII.
[5] „ do. do.
(a) *Vide* note, p. 24, *supra*.

21. Or a fee is that which is described by Vyása: "What [is given] to bring the bride to her husband's house, is denominated her fee".[1] That is, what is given by way of bribe or the like to induce her to go to the house of her husband.

22. This fee occurs indiscriminately in any form of marriage, whether that is termed Bráhma or another. Such, or any similar property of a childless woman, her brothers inherit.

23. But it does not include a gratuity (sulka) presented to damsels at marriages called Asura and the rest. For that gratuity is restricted to the particular form denominated Asura. Accordingly it is said, "The Asura marriage is grounded on the receipt of wealth; the Gándharva, on reciprocal connection; the Rákshasa, on seizure in war; and the Paisácha is where the bride is obtained by fraud".[2]

24. Hence, since there is no gratuity at the Rákshasa marriage, nor at the other, the conclusion, deduced from association with nuptial gratuity, that only such property goes to the brother as was received under the Asura and other similar marriages, must be rejected: as also because that is not the separate property of the woman; for only wealth received by the father or other person is denominated a gratuity. Thus Manu says: "Let no father, who is wise, receive a gratuity, however small, for giving his daughter in marriage; since the man, who through avarice, takes a gratuity, is a seller of his offspring".[3] "Father" is here a general expression. Therefore, a brother, or any other person, accepting a present is a receiver of a gratuity. Consequently, a gratuity (sulka) is that which is accepted by the father or other person.

25. Hence the argument is refuted, which has been thus proposed; that as a woman's separate property received in the form of a gratuity (sulka) is possible only in an Asura marriage, therefore the gifts of kindred and a gift subsequent, which are specified in the same passage (§ 10), shall also be inherited by the brother, provided they are relative to an Asura marriage.

26. But, since property, received as a fee or perquisite (sulka) in the manner described (§ 18 and 21), is possible under every form of marriage, the brother is heir in all such instances; conformably with the text. For it contains no restriction [to any particular form of marriage, nor to that called Asura in particular].

27. Thus the text of Gautama also conveys the same import with that of Kátyáyana (§ 12). It is as follows: "The sister's fee belongs to the uterine brothers; after them, it goes to the mother; and next to the father or, as some say, before her".[4]

28. The meaning of the passage is this: in the first place that property goes to her brother of the whole blood. But, on failure of him, it belongs to the mother. In her default, it devolves on the

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[1] II. Cole. Dig., 592, CCCCLXXI.
[2] Yájñavalkya, I. 61.
[3] Manu, III. 51.
[4] Gautama, XXVIII. 25 and 26.

father. "Some say before her." This is stated as the doctrine of others.

29. Therefore, the property goes first to the whole brothers; if there be none, to the mother; if she be dead, to the father: but, on failure of all these, it devolves on the husband. Thus, Kátyáyana says: "That, which has been given to her by her kindred, goes, on failure of kindred, to her husband".[1]

30. By saying "on failure of kindred", the failure of brothers is likewise indicated. For, since the parent's right of succession is in default of brothers, [the failure of the preferable claim] must be concluded by the argument *a fortiori* exemplified in the case of the loaf and staff.

31. On failure of heirs down to the husband, this rule again is provided, which Brihaspati thus delivers, "The mother's sister, the maternal uncle's wife, the father's sister, the mother-in-law, and the wife of an elder brother, are pronounced similar to mothers. If they leave no issue of their body, nor son, nor daughter's son, nor sons of those persons, the sister's son and the rest shall take their property".[2]

32. Both son and daughter are here signified by the term "issue of the body". For they bar every other claimant. By "son" is meant the child of a rival wife. For a passage of law says, "If, among all the wives of the same husband, one bring forth a male child, Manu has declared them all, by means of that son, to be mothers of male issue".[3] Nor is the term "son" an epithet of "issue of the body": for it would be superfluous; and the sister's son or other remote heir would have the right of succession, though a son of a contemporary wife be living.

33. If there be no legitimate son or daughter, nor a grandson in the male line, nor a son of a rival wife, the right of succession devolves on the daughter's son.

34. By the pronoun in the phrase "sons of those persons" (§ 31) the woman's own issue and the child of a rival wife are signified. Therefore, their sons have a right to inherit; not the son of a daughter's son also, for he is excluded from the oblation of food at obsequies.

35. For want then of sons and other lineal heirs as here specified, and in default of brothers or other preferable claimants, including the husband, the inheritance passes to the sister's son and the rest, although kinsmen, as the father-in-law, the husband's elder brother, or the like, be living. For the text (§ 31) bears no other import; and the chief purpose of indicating, under the head of "inheritance", the competency to present funeral oblations, as is done by describing the women as similar to mothers, and certain persons

[1] II. Cole. Dig., 607, CCCCXCII. [2] Brihaspati, XXV. 88 and 89.
[3] Manu, IX. 183.

as standing in the relation to them of sons, is to suggest the right of succession to their property.

36. Hence, since the text enumerates "sister's son", &c., if the order of succession consequently be, first the sister's son, then the husband's sister's son, next the child of the husband's younger brother, afterwards the child of the husband's elder brother, then the son of the brother, after him the son-in-law, and subsequently the younger brother-in-law, the right would devolve last of all on the younger brother of the husband, contrary to the opinion and practice of venerable persons. Therefore, the text is propounded, not as declaratory of the order of inheritance, but as expressive of the strength of the fact. Thus it is declared by Manu, under the head of Inheritance: "To three ancestors must water be given at their obsequies; for three is the funeral oblation of food ordained: the fourth is the giver of oblations; but the fifth has no concern with them".[1] In like manner Yájñavalkya shows succession to property in right of the funeral oblation: "Among these, the next in order is heir, and giver of oblations, on failure of the preceding".[2] The son's preferable right too appears to rest on his presenting the greatest number of beneficial oblations, and on his rescuing his parent from hell. And a passage of Vriddha Sátátapa expressly provides for the funeral oblations of these women: "For the wife of a maternal uncle or of a sister's son, of a father-in-law and of a spiritual parent, of a friend and of a maternal grandfather, as well as for the sister of the mother or of the father, the oblation of food at obsequies must be performed. Such is the settled rule among those who are conversant with the Vedas".

37. This then is the order of succession, according to the various degrees from the oblation of food at obsequies. In the first place, the husband's younger brother is entitled to the woman's property; for he is a kinsman (sapiṇḍa), and presents oblations to her, to her husband, and to three persons to whom oblations were to be offered by her husband. After him, the son either of her husband's elder or of his younger brother is heir to the separate property of his uncle's wife; for he is a kinsman, and presents oblations to her, to her husband, and to two persons to whom oblations were to be offered by her husband. On failure of such, the sister's son, though he be not a kinsman (sapiṇḍa), inherits the separate property left by his mother's sister, because he presents oblations to her, and to three persons, (her father and the rest,) to whom oblations would have been offered by her son. In default of him, the son of her husband's sister is heir to the property of his uncle's wife; because he presents oblations to three persons to whom they were to be offered by her husband, and also presents oblations to her and her husband. On failure of him, the brother's son is the successor to his aunt's property, for he presents oblations to the father, to her

[1] Manu, IX. 186. [2] Yàjñavalkya, II. 133.

grandfather, and to herself. If there be no nephew, the husband of her daughter is heir to his mother-in-law's property, since he presents oblations to his mother-in-law and father-in-law.

38. The order of succession must be assumed: and the mention of "a sister's son" and the rest (§ 31) was intended merely for an indication of the heirs, without specifying the order in which they succeed.

39. Again, on failure of these six, it must be understood that the succession devolves on the father-in-law, the husband's eldest brother and the rest, according to their nearness of kinship.

40. It must be supposed, that this text (§ 31) is applicable where a failure of kinsmen (sapiṇḍa) exists: for, in this chain of successors, the husband's younger brother, and his son, and the son of the husband's elder brother, have been specified; and the husband's father and elder brother, who are nearer of kin, have been omitted.

41. Therefore, the practice which has been introduced owing to the wrong comprehension of the text [of Bṛihaspati, § 31, or of those of Manu and Yájñavalkya,] and to misunderstanding the true sense of the law, must be rejected as destitute of reason and by authority those who submit to demonstration.

42. Thus has succession to the separate property of a childless woman been explained.

CHAPTER V.

EXCLUSION FROM INHERITANCE.

1. In the next place, persons incompetent to inherit are specified, for the purpose of making known, by the exception, the competent heirs. On this subject, Ápastamba says: "All co-heirs, who are endowed with virtue, are entitled to the property. But he, who dissipates wealth by his vices, should be debarred from participation, even though he be the first-born".[1]

2. This passage is read by Báloka in a confused manner so as to give just the opposite meaning: "But he, who acquires wealth by his virtuous conduct, being the eldest son, should be made an equal sharer with the father". That reading is altogether unauthorized.

3. So "The heritable right of one who has been expelled from society, and his competency to offer oblations of food and libations of water, are extinct".[2] "One who has been expelled from society", is a person excluded from drinking water in company.

[1] Ápastamba, II. 6, 14, 14 and 15. [2] II. Cole. Dig., 423, CCCXVIII.

4. So Brihaspati: "Though born of a woman of equal class, a son destitute of virtue is unworthy of the paternal wealth. It is declared to belong to such kinsmen offering funeral oblations as are of virtuous conduct. A son redeems his father from debt to superior and inferior beings. Consequently, there is no use served by one who acts otherwise. What can be done with a cow which neither gives milk, nor bears calves? For what purpose was that son born, who is neither learned nor virtuous? A son, who is devoid of science, courage and good purposes, who is destitute of devotion and knowledge, and who is wanting in good conduct, is similar to urine and excrement".[1]

5. Ápastamba says: "A son who diligently performs the obsequies of his father and other ancestors is of approved excellence, even though he be uninitiated: not a son who acts otherwise, be he conversant even with the whole Veda".[2]

6. "Since a son delivers his father from the hell called *put*, therefore, he is named *putra* by the Self-existent himself."[3] By this and similar passages, great benefits are stated to be secured by means of a son. His connection with the property is therefore the reward of his beneficial acts. If then he neglect them, how should he have his hire? Accordingly, Manu says: "All those brothers who are addicted to vice lose their title to the inheritance".[4]

7. So, "Impotent persons and outcasts are excluded from a share of the heritage; and so are persons born blind and deaf; as well as madmen, idiots, and dumb persons, and those who have lost a sense [or a limb]".[5]

8. The impotent person is described by Kátyáyana: "The man is called impotent, whose urine froths not, whose feces sink in water, and whose virile member is void of erection and of semen".[6]

9. The term 'born' is connected in construction with the words 'blind' and 'deaf'. One who is incapable of articulating sounds is "dumb". An "idiot" is a person not susceptible of instruction.

10. Yájñavalkya says: "An outcast and his issue, an impotent person, one lame, a madman, an idiot, a blind man, a person afflicted with an incurable disease, these are not sharers but must be maintained".[7] One who cannot walk is "lame".

11. Although they be excluded from participation, they ought to be maintained, excepting, however, the outcast and his son. That is declared by Devala: "When the father is dead, an impotent man, a leper, a madman, an idiot, a blind man, an outcast, the offspring of an outcast, and a person wearing the token [of religious

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[1] Brihaspati, XXV. 42-45.
[2] Not found.
[3] Manu, IX. 138.
[4] Manu, IX. 214.
Ibid, 201.
[5] II. Cole. Dig., 436, CCCXXX.
[6] Yájñavalkya, II. 141.

mendicity] are not competent to share the heritage. Food and raiment should be given to them, excepting the outcast. But the sons of such persons, being free from defects, shall obtain their fathers' share of the inheritance".[1] *A person wearing the token of mendicity* is one who has become a religious ascetic.

12. By the term "outcast", his son also is intended; for he is degraded, being procreated by an outcast. That is confirmed by Baudháyana, who says: "Let the co-heirs support with food and apparel those who are incapable of business, as well as the blind, idiots, impotent persons, those afflicted with disease and calamity, and others who are incompetent to the performance of duties: excepting however the outcast and his issue".[2]

13. On this subject, Nárada says: "An enemy to his father, an outcast, an impotent person, and one who is addicted to vice, take no shares of the inheritance even though they be legitimate: much less, if they be sons of the wife by an appointed kinsman".[3]

14. Kátyáyana ordains that "The son of a woman married in irregular order, or begotten on her by a person of the same gotra is unworthy of the inheritance; and so is an apostate from a religious order".[4]

15. If a woman of superior caste be espoused after marrying one of inferior class, both marriages are contrary to regular order. The son of either of these women, being kshetraja, or issue of the wife, procreated by a kinsman authorized to raise up issue to the husband, is unworthy of the inheritance. But, a son begotten by the husband himself, being of the same caste, on his wedded wife espoused in irregular order, is heir to the estate: so likewise is a son begotten by the husband on a wife dissimilar in class but espoused in regular gradation.

16. That is declared by Kátyáyana: "But the son of a woman married in irregular order, may be heir provided he belong to the same class with his father: and so may the son of a man, belonging to a different caste, by a woman espoused in the regular gradation. The son of a woman married to a man of inferior caste, is not heir to the estate. Food and raiment only are considered to be due to him by his kinsmen. But, on failure of them, he may take the paternal wealth. The kinsmen shall not be compelled to give the wealth received by them, not being his patrimony".[5]

17. A possibility exists of an impotent man and the rest, as above enumerated (§ 7), espousing wives. "If the eunuch and the rest should at any time desire to marry, the offspring of such as have issue, shall be capable of inheriting."[6] *Issue* signifies offspring.

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[1] II. Cole. Dig., 426, CCCXXI.
[2] Baudháyana, II. 2, 3, 37-40.
[3] Nárada, XIII. 21.
[4] II. Cole. Dig., 439, CCCXXXVII.
[5] ,, do. do.
[6] Manu, IX. 203.

18. It must not be objected: how can they contract marriages, since the eunuch, not being male, is incapable of procreation, and the dumb man and the rest are degraded for want of initiation and investiture, because they are unapt for study? The eunuch may obtain issue from his wife by means of another man; and a person unfit for investiture with the sacerdotal string is not degraded from his caste for want of that initiation, any more than a Súdrá.

19. Therefore, the sons of such persons, being either their natural offspring or issue raised up by the wife, as the case may be, are entitled, provided they be free from similar defects, to take their allotments according to the shares of their fathers. Their daughters must be maintained until married, and their childless wives must be supported for life. It is so declared by Yájñavalkya: "Their sons, whether legitimate or the offspring of the soil, are entitled to allotments, if free from similar defects. Their daughters also must be maintained until provided with husbands. Their childless wives, conducting themselves aright, must be supported; but, such as are unchaste should be expelled; and so indeed should those be who are perverse".[1]

20. Thus it has been explained, who are persons incompetent to inherit.

CHAPTER VI.

PROPERTY LIABLE, OR NOT LIABLE, TO PARTITION.

SECTION I.

1. In the next place, effects which may be divided, and such as are exempted from partition, are here explained. On that subject Kátyáyana says: "What belonged to the paternal grandfather, or to the father, and any thing else acquired by themselves, must all be divided at a partition among heirs".[2]

2. And anything else]; here the particle 'and' is connected in the sentence, with the term 'themselves'; viz., 'acquired by themselves'; or, as implied by the conjunctive particle, 'acquired by another person': but his acquisition must have been made with the aid of the common property. Such is the meaning.

3. Manu and Vishṇu declare that impartible which is gained without expenditure of patrimony. "What a brother has acquired by his labour, without using the patrimony, he need not give up without his assent; for it was gained by his own exertion."[3]

4. Since the patrimony is not used, there is no exertion on the part of the others, through the means of the common property: and, since it was obtained by the man's own labour, there is no physical

[1] Yájñavalkya, II. 142 and 143. [2] II. Cole. Dig., 478, CCCLXVIII.
[3] Manu, IX. 208. Vishṇu, XVIII. 42.

effort on the part of the rest: it is, therefore, the separate property of the acquirer alone; for the phrase "it was gained by his own exertion", is stated as a reason.

5. So Vyása ordains: "What a man gains by his own ability, without relying on the patrimony, he shall not give up to the co-heirs; nor that which is acquired by learning".[1]

6. Since it is expressed in general terms, 'what he gains solely by his own ability', all property, so acquired, being his own, is not common. But, as the gains of science, though obtained by the man's own ability, are shared by parceners equally or more learned, the phrase "nor that which is acquired by learning", is subjoined for the sake of excluding illiterate or less learned parceners.

7. So Yájñavalkya directs: "Whatever else is acquired by the co-parcener himself, without detriment to the father's estate, as a present from a friend, or a gift at nuptials, does not appertain to the co-heirs".[2]

8. Here, the mention of "a present from a friend", and so forth, is intended as illustration only; since it is in such modes that acquisitions are usually made without expenditure.

9. So Manu likewise says: "Wealth, however, acquired by learning, belongs exclusively to him, who acquired it; and so does anything given by a friend, received on account of marriage, or presented as a mark of respect".[3]

10. Vyása: "Wealth gained by science, or earned by valour, or received from affectionate kindred, belongs at the time of partition to him and shall not be claimed by the co-heirs".[4]

11. What is obtained through favour or the like, from a father, uncle, or other kind relations, is *received from affectionate kindred.*

12. Nárada accordingly says: "Excepting what is gained by valour, the wealth of a wife, and what is acquired by science, which are three kinds of property exempt from partition; and any favour conferred by a father".[5]

13. What was received at the time of obtaining a wife is here called the "wealth of a wife"; meaning effects obtained on account of marriage. Excepting these acquisitions (§ 12), let him divide other property: for this phrase is here understood, as expressed in another sentence.

14. By these and other similar passages, the circumstance of the property having been acquired by valour or the like, is not

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[1] II. Cole. Dig., 451, CCCLIV.
[2] Yájñavalkya, II. 119.
[3] Manu, IX. 206.
[4] II. Cole. Dig., 444, CCCXLVI.
[5] Nárada, XIII. 6.

stated as a sufficient reason for its being exempt from participation; since a distribution even of property so acquired, is expressly ordained in certain cases. Thus, Vyása directs a partition of effects so gained, with the use of the common property: "The brothers participate in that wealth, which one of them gains by valour or the like, using any common property, either a weapon or a vehicle. To him two shares should be given: but the rest should share alike".[1] So Nárada ordains: "He, who maintains the family of a brother studying science, shall take, be he ever so ignorant, a share of the wealth gained by science".[2]

15. Since the term "maintains" is exhibited in the singular number, if the family of the brother, who is studying science, be made to prosper by another brother at the expense of his own wealth, or by his physical exertion, then he also has a title to property gained by that science.

16. So [the same author says]: "A learned man need not give a share of his own acquired wealth, without his assent, to an unlearned co-heir: provided it were not gained by him using the paternal estate".[3]

17. The word "paternal" contemplates joint property. What has been gained by him without using that, a learned man need not give up, against his will, to an unlearned co-heir. But to a learned or instructed co-heir, he must give a share of anything acquired by him, even without the use of joint property. Accordingly, Gautama says: "His own acquired wealth, a learned man need not give up, against his inclination, to unlearned co-heirs".[4]

18. What is gained by his personal labour with his separate funds, being his own acquired property, he need not give up, if he be unwilling to surrender it, to unlearned co-heirs: but he must certainly give it to learned brothers.

19. This, however, relates only to the gains of science. So Kátyáyana declares: "No part of the wealth, which is gained by science, need be given by a learned man, to his unlearned co-heirs: but such property must be given by him, to those who are equal or superior in learning".[5]

20. The word "learning", expressed in the text, is connected with both terms, "equal" and "superior". Therefore, it must be given to such as are equal or superior in learning: but those who are less learned, or who are unlearned, have no right to participate.

21. Since it appears from these and other texts that partition does or does not take place, in the case of wealth acquired by science, valour or the like, according as joint property is or is not employed; and since this alone is the reason, a revealed maxim,

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[1] II. Cole. Dig., 281, CX.
[2] Nárada, XIII. 10.
[3] Nárada, XIII. 11.
[4] Gautama, XXVIII. 30.
[5] II. Cole. Dig., 449, CCCL.

containing that term only, must be inferred in words such as these, 'divide that, which is acquired by use'; not one containing also the terms 'gained by valour' and so forth: for the purpose is accomplished by the general maxim, which must necessarily be inferred.

22. This is precisely the object of the reasoning taught [in the Mímámsá] under the head of Holáká. (a)

23. Or the same meaning may be deduced from reasoning. That which is acquired by a person belongs exclusively to him, so long as he lives, if there be no special rule; but, where the exertion of one is merely through the joint property, and the other contributes to the acquisition by his person and wealth, it is a rule suggested by reason, that the one shall have a single share, and the other, two. Hence likewise it follows, that, if the joint stock be used, shares should be assigned to each person in proportion to the amount of his allotment, be it little or much, that has been used.

24. Moreover, the text of Kátyáyana: "When brothers separated in regard to the patrimony, and subsequently living again together, make a partition, he, from whom an acquisition has proceeded, shall again take a double share".[1]

25. This is expounded by Srikara as signifying, that, 'a reunited parcener, who has made an acquisition with the use of the joint stock, shall have two shares; and the rest, one a-piece'.

26. Hence, it appears to be the opinion both of the saint and of the commentator, that wealth, gained with no use of the common funds, appertains exclusively to the acquirer, even in the instance of a reunion of co-parceners, and that such wealth is not joint property: since no special allotment is directed in the case of a gain made without the use of joint stock.

27. Such being their meaning, the same is as proper for the unseparated co-parcener as for the reunited one: because residence in the same abode is equally cogent as a reason, when separation has not yet taken place, as when it has been annulled. Since the text is likewise pertinent, as directing, that the acquirer shall have two shares of an acquisition made with the use of common property, it is not right to restrict it to the case of reunited parceners: for the reasoning taught under the head of Holáká opposes such a limitation.

28. Besides, it is an uncontested rule, that an acquirer, as such, shall have two shares of wealth gained by the use of joint

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[1] Not found.

(a) This forms the eighth topic of discussion in the 3rd chapter of the 1st Book of Mímámsá Sutra. The principle asserted there is that a general, and not a restrictive, precept should be inferred as the basis of various local usages differing from one another on the same subject.

funds: for that allotment has been ordained by a text [of Vyása] above cited (14) in the single case of the use of common stock. It is not reasonable to assign two shares only in the instance of an acquisition made by personal exertion with separate funds: but something more would be reasonable; either the whole, or something less. Here, since something less has not been directed either by sages or by compilers, and since it appears that the rest of the brothers participate [in one case] on account of the employment of their common stock, it is fit that their participation should be disallowed, where that does not exist.

29. The rule, that the acquirer shall have twice as much as the rest, must be grounded on reasoning: otherwise, it would be necessary either to insert in the Vedic text to be inferred, the condition of a gain made, or else to establish separately the title.

30. It is therefore true that wealth gained without the use of joint stock belongs to the acquirer alone, not to the rest of the co-parceners.

31. Moreover, a general maxim to this extent, 'Let all share what is gained by an unseparated co-parcener', cannot be inferred. For an exception to wealth acquired by valour or the like does occur. Thus, Manu says: "Wealth, however, acquired by learning, belongs exclusively to him, who acquired it: and so does any thing given by a friend, received on account of marriage, or presented as a mark of respect".[1] So Manu and Vishnu ordain: "What a brother has acquired by his labor, without using the patrimony, he need not give up without his assent; for it was gained by his own exertion".[2]

32. Without using]; this is connected likewise with "wealth acquired by learning": for, in such instance also, a precept, ordaining partition if joint funds be used, does occur.

33. Thus Yájñavalkya says: "Whatever else is acquired by the co-parcener himself, without detriment to the father's estate, as a present from a friend, or a gift at nuptials, does not appertain to the co-heirs. Nor shall he, who recovers hereditary property, which had been taken away, give it up to the co-parceners: nor what has been gained by learning".[3] So Nárada: "Excepting what is gained by valour, the wealth of a wife, and what is acquired by learning, which are three sorts of property exempt from partition; and any favour conferred by a father".[4] Likewise Vyása: "Wealth gained by science, or earned by valour, or received from affectionate kindred, belongs, at the time of partition, to him [who acquired it], and shall not be claimed by the co-heirs".

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[1] Manu, IX. 206.
[2] Vishṇu, XVIII. 42; Manu, IX. 208.
[3] Yájñavalkya, II. 119 and 120.
[4] Nárada, XIII. 6.
[5] II. Cole. Dig., 444, CCCXLVI.

34. Received from affectionate kindred] obtained from kind relations.

35. What is given by the paternal grandfather, or by the father, as a token of affection, belongs to him; neither that, nor what is given by a mother, shall be taken from him. "What a man gains by his own ability, without relying on the patrimony, he shall not give up to the co-heirs, nor that which is acquired by learning."

36. By thus excepting, under these and other texts, in regard to all the castes and all the classes of mixed or of mediate origin, wealth acquired, without the use of the joint stock, by the acquirer's own ability; whether effected by means of any science; or received from affectionate kindred (being given by a relative); or obtained from a friend, or at nuptials, or with a token of respect; or gained by valour or earned by labour (that is, by agriculture, service, merchandise, &c.); every acquisition is excepted: therefore, since there can be none other, the precept has no application.

37. Or a case or two may be, in some manner, assumed, to which the precept may relate. Still those cases should have been declared by express words: since it would have been easy for the sages to have said, 'divide certain property gained by an unseparated co-parcener': and such property would be readily understood under its own name; better too than by using a long and circuitous expression like this, 'other than the gains of valour, &c., [acquired without use of joint funds]'; for it is verbose superfluity. And, if the present be intended as an exception, all the sages ought to specify every excepted term: for, without that, the meaning of "other than such" would be unexplained; and the restrictive words of the sages would consequently appear as idle as the prattle of children. But, if it be intended for illustration, then some one instance is negligently propounded by one author; and another by another writer; and the omission of specifying the whole is right.

38. Therefore, the maxim is, 'divide wealth acquired with the use of the common stock': and particular terms, as, 'the gains of valour', &c., are inserted in the texts as instances.

39. Hence, the declaring common of property merely because it was gained by an unseparated co-parcener, is not grounded on authority.

40. Besides, the text of Yájñavalkya, ("Nor shall he who recovers hereditary property, &c.", § 33,) is acknowledged by you likewise, as signifying, that, if one recover the property of the father, grandfather, or other ancestor, which has been taken away by any person, it appertains to him alone, not to the rest. Thus, [the author] denying the right of unseparated co-heirs in the property, because it has been recovered, although a trace of the former right exist, denies the remoter title of the rest to wealth originally gained by the man himself.

41. It has been said by Śrîkara: "If wealth, acquired without using the patrimony, belong exclusively to the acquirer, then effects, received as a present, can never be shared with another brother; for the receipt of a present cannot be attended with expenditure of paternal wealth. It is indeed alleged, that valuables are employed, at the receipt of gifts, for the gratification of the donor; as a heifer or the like in the purchase of sacrificial materials; or as milk for the support of life, during the sacrifice denominated Jyotishṭoma. Here the valuables are not employed for the gratification of the giver, since his gratification, by the receipt of other effects, is not requisite for a gift, the intention of which is spiritual; and, as the act of receiving is momentary, nourishment for the person, who accepts the present, is not requisite, as it is during the tedious celebration of the Jyotishṭoma, for him who by that ceremony seeks celestial bliss".

42. That is futile; for instances often do occur, in the world, of expenditure of wealth, by giving presents to induce a gift and, in the present age, wealth received in gifts is similar to that which is earned by service. Accordingly, it is said: "In the Kali age, [gifts are made] to a follower".

43. And as for what is alleged [by the same author], that 'gratification' is no cause of receipt of presents, having no such operation, since long attendance is the cause; and wealth, therefore, is not the occasion of such receipt 'through the medium of gratification'; that is still more futile: for long attendance and the rest become causes of the receipt of presents, through the medium of gratification; and, according to the diversity of men's dispositions, [gratification] is seen to arise, in the mind of one, from pecuniary gifts; of another, from long attendance or the like; of some, from the mere evincing of particular qualities. If the effect be not produced, for want of an attendant circumstance, it must not be thence concluded to be no cause; since, as is observed accordingly, gratification is produced by means which are not invariable.

44. It has been further urged: 'If that wealth mediately accomplishes the receipt of presents, being employed during attendance; since receipt cannot take place without contiguity; nor can this be without nourishment: that is denied; for nourishment, used for the support of life, previous to the celebration of the Jyotishṭoma or other religious ceremony, would immediately serve for that ceremony, since the Jyotishṭoma could not take place without previous support of life: all food would, therefore, be intended for religious ends, not for human purposes: and consequently wealth, which supplies it, would be designed for sacrificial uses; and the means of acquiring it would also be meant for the same end; and thus the maxim, that the acquisition of wealth itself, and food, are adapted to human purposes, would be contradicted.'

45. That is most futile; for, although it mediately contributes to the celebration of the Jyotishṭoma, food obviously serves

the immediate purpose of satisfying hunger; and being designed for human uses, it contributes to religious ends; but there is no proof of its being intended for such ends; nor does its so contributing operate towards such a result. How then should it follow, that acquisition of wealth, wealth itself, and food, are adapted to religious purposes?

46. Hence, there is no room for the reproach: 'If wealth be acknowledged to contribute to the receipt of presents, by means of nourishment previous to such receipt, then, since no acquisition of wealth can be made without nourishment from the time of the receiver's birth, every mode of gain would be accompanied with detriment to the patrimony; and the restriction, "without using the patrimony", (§ 3) would therefore not be inserted'. For, lest the restriction become purposeless, the text is understood to signify employment of wealth other than an expenditure of it adapted to nourishment and similar use.

47. Moreover, an expenditure of wealth for nourishment or other use, must necessarily be made even by a person remaining at home; and such expenditure is not designed for the acquisition of wealth: but its having been actually intended for that purpose is a requisite; consequently the proposition does not go too far.

48. Accordingly Visvarúpa has said: 'When wealth is not acquired by giving [or using] paternal property, it is declared not to be common, any more than wealth received on account of marriage: it becomes not common, merely because property may have been used for food or other necessaries; since that is similar to the sucking of the breast'.

49. Hence, though much wealth, belonging to the father, have been expended joyfully at the son's initiation, or at his wedding, what is obtained by him as alms during his austerities as a student, or received on account of his marriage, is not common; for that expenditure of wealth was not made with a view to gain.

50. It is, therefore, established, that wealth, acquired by means of joint stock used for the express purpose of gain, is common property; and no other is so.

51. The same import may be deduced by abridging the substance of what has been expressed, after various disquisitions, by Jitendriya, who says: 'Whatever is acquired with separate funds is separate property. For the sake of perspicuity, [gains of science] are specified by way of example, in these and other words: "Wealth, however, acquired by learning, belongs exclusively to him who acquired it".[1] Such sorts of property are exempted from partition, because they are separate: but even these sorts of wealth become common, if there be a sufficient cause of joint right. This also has, for the sake of easy understanding, been in

[1] Manu, IX. 206.

certain instances described by the circumstance of joint stock used; in others, by that of united exertion made; in some, by that of common relation.

52. It has been, likewise, said by Báloka: 'The rest cannot have a right to wealth gained by one brother through science, or similar means; since there is no warrant for it'.

53. The practice of dividing wealth gained by receipt of presents without expenditure of joint property, which is observed to prevail among virtuous people, is not unsuitable, whether founded on the mutual affection of the brothers, or on a manly sentiment. Or people, observing the partition of wealth received in presents, and not knowing that this partition of the gains of learning is made under a special rule respecting science, but erroneously supposing the partition to take effect because the wealth was gained by an unseparated co-heir, have done so of their own accord. On that the practice of some is based. There is consequently nothing incongruous.

54. But, as for the text of Manu, ("After the death of the father, if the eldest brother acquire any wealth, a share of that belongs to the younger brothers, provided they have duly cultivated science")[1] the meaning of it is this; under another text, placing the eldest and younger brothers in the relation of father and son, ("As a father should protect his sons, so should the first-born cherish his younger brothers; and they should behave to their elder brother, like children to their father, conformably with their duty respectively"),[2] the younger brothers have a title to the wealth of the eldest, though obtained without use of joint stock, as they have in their father's acquisitions. But there is this difference: that even the unlearned sons are entitled to their father's acquired property; but the learned brothers only have a right to participate in the wealth gained by the eldest.

55. This interpretation is right; for the terms of the text would else become meaningless; expressing 'after the death of the father' 'if the eldest brother, &c.', 'provided they have duly cultivated science'.

56. Consequently, it was an inaccurate assertion that another unseparated brother participates, on the sole ground of the acquisition being made by an unseparated co-heir.

SECTION II.

Definitions of the various sorts of acquisitions, &c., exempt from partition.

1. Here the gains of science are explained. Upon that Kátyáyana says: "What is gained by the solution [of a difficulty] after a prize has been offered, must be considered as acquired

[1] Manu, IX. 204. [2] Manu IX. 108.

through science, and is not included in partition [among co-heirs]. What has been obtained from a pupil, or by officiating as a priest, or for [answering] a question, or for determining a doubtful point, or through display of knowledge, or by [success in] disputation, or for superior [skill in] Vedic study, the sages have declared to be the gains of science and not subject to distribution. The same rule likewise prevails in the arts: for the excess above the price [of the common goods], and that which is gained through skill by winning from another a stake at play, must be considered as acquired by science, and not liable to partition. So Brihaspati has ordained".[1]

2. 'If you solve this well, I will give you so much money': after such an offer, if one solve the difficulty and obtain the prize, it is not subject to distribution.

3. From a pupil] from a person instructed by the acquirer.

4. By officiating as a priest] received as a fee or gratuity from a person employing him to officiate at a sacrifice.

5. These are fees, not presents; for they are similar to wages or hire.

6. So, a question relative to science being resolved, if any one, through satisfaction, give anything though it had not been previously offered.

7. Also, what is obtained by clearing the doubts of one, by whom an offer has been thus made: "To him, who removes my doubts on the meaning of this passage, I will give this gold". Or [it may signify a fee, such as] the sixth part or the like, received for a correct decision between two litigant parties, who applied for the determination of a dubious and contested point.

8. Likewise, what is received as a present or the like for displaying his knowledge in the sacred ordinances and so forth.

9. So, in a contest between two persons respecting their knowledge of sacred ordinances, or in any other controversy whatsoever concerning their respective attainments, what is gained by surpassing the opponent.

10. Likewise, where a single article is to be given, and there are many competitors, what is received for reciting in a superior manner.

11. Also, what is gained by painters, goldsmiths and other artists, through skill in the arts and so forth.

12. In like manner, what is won by defeating another at play.

13. All this is exempt from being shared with the rest of the co-parceners. The meaning is as follows: whatever is acquired

[1] II. Cole. Dig., 444, CCCXLVII.

by any science, belongs to the acquirer, not to the rest. For illustration only, it has been stated at large by Kátyáyana, to obviate the error of Srikara and others.

14. Hence, what is obtained as a present by displaying and making known his own knowledge, is also an acquisition made by science; for, a present is given to a learned man on account of his learning.

15. So Yama: "A man endowed with science, regular in duties, contented, patient, with subdued passions, of strict veracity, grateful, disinterested, kind to cows, careful of them, generous, a performer of sacrifices, and a Bráhmin, the sages pronounce to be a worthy object. But a present should not be conferred on such as neglect rigid observances, or are ignorant of holy texts, or merely live by their caste: for a stone transports not a stone [over the stream]".[1]

16. For, it is in right of his learning, that he is a fit object of gifts; and unlearned men are unworthy objects.

17. Hence, what has been alleged by some one, that "the gains of science" signify such gifts [only] as are received on account of teaching, must be rejected as having been said in total ignorance of the text above cited: and because the word "science" (*vidyá*) being derived from the root *vid* (to know) signifies any knowledge [or skill].

18. As for what is objected by Srikara, that 'by pronouncing wealth received as presents to be the earning of science, receipt of presents, instruction of pupils, and assistance in sacrifices, are confounded': that is very futile; since, although presents and the rewards of teaching and assisting in sacrifices, and other particular sorts, be connected as being equally gains of science, yet the several sorts are not confounded: for, still the rewards of teaching and of sacrificing are not presents; and it is an uncontested truth, that a black bull, a red or a pied one, or other individuals, though equally bulls, are not confounded.

19. Accordingly, since [it may be asked] 'how does the sage, by pronouncing what is received from a pupil or for officiating as a priest to be the earning of science, fail in discriminating the rewards of teaching and of sacrificing'? the allegation merely by way of offering an objection, must be rejected.

20. Kátyáyana explains the gains of valour, &c. "When [a soldier] performs a gallant action, despising danger and favour is shown to him by his lord pleased with that action, whatever property is then received by him, shall be considered as gained by valour. That and what is taken under a standard, are declared not to be subject to partition. What is seized in war, after risking his life for his lord and routing the forces of the enemy, is named spoil taken under a standard".[2]

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[1] II. Cole. Dig., 445. [2] Quoted as Manu's in II. Cole. Dig., 465, CCCLX.

21. "But wealth received on account of marriage is considered to be that which has come with a wife".[1]

22. The meaning is, received at the time of accepting a bride.

23. So Manu and Vishnu state other sorts of property exempt from partition. "Cloths, vehicles, ornaments, prepared food, water, women and furniture for repose or for meals, are declared not liable to distribution."[2]

24. Cloths] personal apparel and raiment intended to be worn at assemblies.

Vehicles] carriages or horses, and the like.

Ornaments] rings, and so forth.

Prepared food] sweetmeats, &c.

Water] contained in a pond or well, as suited to use.

Women] other than female slaves.

Furniture for repose or for meals] beds and vessels used for eating and sipping and similar purposes.

25. So Vyása: "A place of sacrifice, a field, a vehicle, dressed food, water and women, are not divisible among persons of the same gotra though [transmitted] for a thousand generations".[3]

26. A place of sacrifice] the spot, where sacrifices are performed; or else an idol: not wealth obtained by sacrificing; for that has been dealt with as being the earning of science.

27. Thus Kátyáyana: "The path for cows, the carriage-road, cloths, and any thing which is worn on the body, should not be divided; nor what is requisite for use, or intended for arts: so Brihaspati declares".[4]

28. Requisite for use] what is fit for each person's use; as books and the like in the study of the Vedas, &c. That shall not be shared by ignorant brothers. So what is adapted to the arts, belongs to artists; not to persons ignorant of the particular art.

29. Also Sankha and Likhita: "No division of a dwelling takes place; nor of water-pots, ornaments, and things not of general use, nor of women, cloths, and channels for draining water.[a] Prajápati has so ordained".[5]

30. A house, garden or the like, which one of the co-heirs had constructed within the site of the dwelling place, during the father's life-time, remains his indivisible property: for his father has assented by not forbidding the construction of it.

31. So, even property inherited from the paternal grandfather,

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[1] II. Cole. Dig., 463, CCCLVIII.
[2] Manu, IX. 219.
[3] II. Cole. Dig., 470, CCCLXIV.
[4] ,, do. 471, CCCLXV.
[5] II. Cole Dig., 468, CCCLXII.

[a] The original may also be translated as "water and pathways".

which has long been lost, and is not recovered by the rest through inability, or through aversion to recover, belongs exclusively to the father, if recovered by him with his own funds, and by his own labour, and is not common property.

32. Thus Manu ordains: "If a father recover the property of his father, which remained unrecovered, he need not, against his will, share it with the sons, since in fact it was acquired by himself".[1]

33. Property appertaining to his father, not recovered by the sons; not retrieved by them. The other readings, "anavápya" and "anavápyam" [in place of "anaváptam"] are unauthentic.

34. Brihaspati says: "Over the grandfather's property, which has been seized [by strangers] and is recovered by the father through his own ability, and over [anything] gained by him through science, valour or the like, the father's full dominion is ordained. He may give it away at his pleasure, or he may defray his consumption with such wealth; but, on failure of him, the sons are pronounced entitled to equal shares".[2]

35. Through his own ability]; the author thus indicates use of separate funds.

36. In both texts, the term "father" is indefinite; for a reason is stated: "since in fact it was acquired by himself" (§ 32).

37. Thus the rule must be understood in the instance of any such hereditary property, other than land, exactly as in the case of property not hereditary, but acquired by the man himself.

38. Sankha propounds a special rule regarding land: "Land, inherited in regular succession, but which had been formerly lost, and which a single [heir] shall recover solely by his own labour, the rest may divide according to their due allotments, having first given him a fourth part".[3]

39. By the term "solely", the author intimates, that neither common funds were used nor joint personal exertion made. Still it does not become the separate property of the person retrieving it; but a fourth part of the land recovered must be given to him in addition [to his regular allotment]: by force of the word "land"; and because there is no reason for supposing it to be vague.

40. Thus have been explained both what is partible and what is exempt from partition.

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[1] Manu, IX. 209.

[2] Brihaspati, XXV. 12 and 13.

[3] II. Cole. Dig., 464, CCCLIX.

CHAPTER VII.

ON THE PARTICIPATION OF SONS BORN AFTER A PARTITION.

1. The share of a son born after the partition of the estate is now declared. On that subject Manu and Nárada say: "A son born after a division, shall alone take the paternal wealth [a]; or he shall participate with such [of the brothers] as are reunited with the [father]".[1]

2. If the father, having separated his sons, and having reserved for himself a share according to law, die without being reunited with his sons, then a son, who is born after the partition, shall alone take the father's wealth; and that only shall be his allotment. But, if the father die after reuniting himself with some of his sons, that son shall receive his share from the reunited co-heirs.

3. Thus Gautama says: "A son, begotten after partition, takes exclusively the wealth of his father".[2]

4. He, of whom the conception was subsequent to the division of the estate, is a son begotten after partition, being procreated by a person, who is separated; for, without conception, there is no procreation. Therefore, if the sons were separated, while his wife was pregnant but not known to be so, the son who is afterwards born, shall receive his share from his brothers.

5. Not one only, but even many sons, begotten after partition, shall take exclusively the paternal wealth. Thus Brihaspati says: "The younger brothers of those, who have made a partition with their father, whether children of the same mother, or of other wives, shall take their father's share. A son, born before partition, has no claim on the paternal wealth; nor one begotten after it, on that of his brother".[3]

6. One, born previously to the partition, is not entitled to the paternal estate: nor one begotten by the separated father, to the estate of his brother. So the same author declares: "All the wealth, which is acquired by the father himself, who has made a partition with his sons, goes to the son begotten by him after the partition. Those born before it are declared to have no right; as in the wealth, so in the debts likewise, and in gifts, pledges and purchases".[4]

7. Under the term "all", wealth, however considerable, which is acquired by the father, goes to the son begotten by him after partition.

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[1] Manu, IX. 216. Nárada, XIII. 44.
[2] Gautama, XXVIII. 29.
[3] Brihaspati, XXV. 17 and 18.
[4] *Ibid*, XXV. 19 and 20.

[a] The original reads 'Pitryaméva dhanam labhét'. Literally translated it would read 'Shall take the paternal wealth *alone*'. But having regard to what these authors elsewhere lay down and to Vijnanesvara's commentary on the corresponding verse of Yájñavalkya, the original is here translated into 'Shall *alone* take the paternal wealth'.

8. "They have no claims on each other, except pollution and libations of water."[1]

9. By specifying "pollution and libations of water" only, the author excludes completely pretensions to a participation in wealth.

10. This is applicable only to the case of wealth acquired by the father. But, if property inherited from the grandfather, as land or the like, had been divided, he may take a share of such property from his brothers: for partition of it is authorized [only] when the mother becomes incapable of bearing more children.

11. That is declared by Vishṇu: "Sons, with whom the father has made a partition, should give a share to the son born after the distribution".[2]

12. So Yájñavalkya: "When the sons have been separated, one afterwards born of a woman equal in class, shares the distribution. His allotment must positively be made out of the visible estate corrected for income and expenditure".[3]

13. Since it disagrees with the ordinance, that "he alone shall take the paternal wealth", (§ 1) it must relate to hereditary property, for the reason above-mentioned.

CHAPTER VIII.

ON THE ALLOTMENT OF A SHARE TO A CO-PARCENER RETURNING FROM ABROAD.

1. The participation of one, who arrives after the distribution of the estate, is next declared. On this subject Brihaspati says: "Whether partition have, or have not, been made, whenever an heir appears, he shall receive a share of whatever common property there is. Be it debt, or document, or house, or field, which descended from his paternal ancestor, he shall take his due share of it, when he comes, even though he have been long absent".[4]

2. "If a man leave the common family, and reside in another country, his share must no doubt be given to his male descendants when they return. Be the descendant third, or fifth, or even seventh, in degree, he shall receive his hereditary allotment, on proof of his birth and name".[5]

3. "To the lineal descendants, when they appear, of that man, whom the neighbours and ancient inhabitants know by tradition

[1] Brihaspati, XXV. 20.
[2] Vishṇu, XVII. 3.
[3] Yájñavalkya, II. 123.
[4] Brihaspati, XXV. 22 and 23.
[5] Brihaspati, XXV. 24 and 25.

to be the proprietor, the land must be surrendered by his kinsmen." [1]

4. Under this text, the heir [of a co-parcener] long absent, shall take his due allotment, after making himself known to the old inhabitants settled on all sides.

5. Thus has been declared the participation of one arriving after a division.

CHAPTER IX.

ON THE PARTICIPATION OF SONS BY WOMEN OF VARIOUS CLASSES.

1. Partition among sons of the same father by different women, some equal to himself by class, others married in the direct order of the classes, is now described.

2. Marriage is allowed with women in the order of the classes, as well as with those of equal class; for Manu says: "For the first marriage of the twice-born classes, a woman of the same class is recommended; but for such, as are impelled by desire, those following are preferable in the order of the classes. A Súdrá woman only must be the wife of a Súdrá: she and a woman of his own tribe [are the only wives] of a merchant; they two, and a woman of his own class, are alone eligible for a man of the royal [or military] class; and those [three] and a woman of his own rank [may be wives] of a Bráhmin". [2]

3. A Súdrá woman only]; the particle "only" is connected with every member of the sentence; for that term, expressed immediately before, is understood with the words "she", "they two", and "those three". The meaning is, that marriage in the inverse order of the classes must by no means be contracted.

4. But for such, as are impelled by desire, these, &c.]; this indicates an alleviation of sin, not entire exemption from blame.

5. Sankha and Likhita declare: "Wives must be espoused. Women of like class are preferable for all persons". [3] This is stated as the principal rule. The succedaneous one follows: "Four wives to a Bráhmin are allowed in the direct order; three, to a Kshatriyá; two, to a Vaisyá; and one, to a Súdrá". [4]

6. The numbers here stated, "four", &c., are intended to refer to the castes.

7. These women are wedded wives. So Paithínisi shows: "Four wedded wives to a Bráhmin are allowed; and three, two, and one, to the rest respectively". [5]

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[1] Brihaspati, XXV. 26.
[2] Manu, III. 12 and 13.
[3] II. Cole. Dig., 311, CLII.
[4] ,, do. do.
[5] II. Cole. Dig., 311, CLI.

8. To the rest] to the Kshatriyá, &c., in their order, three, two, and one, may be allowed.

9. Though [such a marriage be] in the direct order of the classes, Manu and Vishṇu have strongly censured the union of a man of a regenerate class with a Súdrá woman. "Men of the twice-born classes, who, through infatuation, marry a woman of the low class, soon degrade their families and progeny to the state of Súdrás. According to Atri and [Gautama] the son of Utathya, he who marries a Súdrá woman is degraded instantly; according to Saunaka, on the birth of a son and, according to Bhrigu, on the birth of a son's son. A Bráhmin, who has cohabited with a Súdrá woman, sinks to hell: or, if he have begotten a child on her, he loses even his sacerdotal rank."[1]

10. It thus appears that the texts are applicable to the instance of such a woman married in regular gradation. Háríta's text also, which agrees with that of Manu and the rest, relates to a woman espoused. Thus he says: "No other is so sinful, as is the husband of a woman of the servile class; for that Bráhmin is slain by the child which he himself begets on her".[2] Accordingly [since marriage with a Súdrá woman, and procreation of issue on her, are offences]; Sankha omits the Súdrá in describing a wife eligible for a twice-born man. "A Bráhminí, a Kshatriyá, and Vaisyá are declared as wives permitted to a Bráhmin; a Kshatriyá and a Vaisyá, to a Kshatriyá; but a Vaisyá is ordained the only wife of a Vaisyá; and a Súdrá, of a Súdrá".[3]

11. Hence these evils do not ensue on the procreation of offspring upon a Súdrá woman, not married to [the Bráhmin] himself: but a venial offence is committed, and a slight penance is requisite, as will be shown.

12. Manu propounds the distribution among sons of the four classes: "Let the Bráhminí's son take three shares of the heritage; and the son of the Kshatriyá wife, two shares; the son of the Vaisyá wife, a share and a half; and the son of the Súdrá wife may take a share. Or let a person, conversant with law, divide the whole wealth into ten parts, and make a legal distribution by this [following] rule: let the Bráhminí's son receive four parts; the son of the Kshatriyá, three; let the son of the Vaisyá have two parts; and let the son of the Súdrá take a single share".[4]

13. Two modes are propounded on the supposition of some [superiority of] good qualities.

14. On this subject Vishṇu has delivered rules: "If there be sons of a Bráhmin, by women of the four classes",[5] &c., down to the concluding passage, "On this principle, shares should be allotted in other cases likewise".[6]

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[1] Manu, III. 15—17.
[2] II. Cole. Dig., 310, CXLVIII.
[3] „ do. do. CXLIX.
[4] Manu, IX. 151—153.
[5] Vishṇu, XVIII. 1.
[6] *Ibid*, XVIII. 40.

15. The son of a Bráhmin by a Kshatriyá wife, if eldest of all by birth and superior in virtue, shall be an equal sharer with the Bráhmin son: and the son of a Bráhmin, or of a Kshatriyá, by a Vaisyá wife, shall, in like circumstances, be an equal participator with the Kshatriyá son. Brihaspati directs: "The son of a Kshatriyá wife, being elder by birth, and endowed with superior qualities, shall have an equal share with the venerable son of the Bráhminí; and, in like manner, the son of a Vaisyá wife shall share equally with the soldier". [1] So Baudháyaṇa says: "Of the sons by a woman of equal class and by one of the next inferior class, if the son of the wife one degree lower [than her husband] be [the most] virtuous, he may take the allotment of an eldest son. For a virtuous brother is the supporter of the rest". [2]

16. It is thus shown, that the Súdrá likewise, in similar circumstances, shall have an equal share with the Vaisyá son.

17. But land, which has been acquired by the father, through acceptance [of a pious donation,] shall belong to the son of the Bráhminí exclusively, not to the Kshatriyá son and the rest: and the house, and hereditary field, appertain to the sons of regenerate classes, not to the Súdrás. So Brihat Manu declares: "The sons of the Bráhminí shall take land which was received as a pious gift; but all the sons of twice-born classes shall have the house, as well as the field, which has descended from ancestors". [3]

18. All sons, belonging to regenerate classes, have a right to hereditary acquisitions gained both by the paternal grandfather and by the paternal great-grandfather; for it is expressed without restriction, "descended from ancestors". But, in the case of land obtained by acceptance of gift, since the right of the Kshatriyá son and the rest is denied, that of great-grandsons and other descendants is unacknowledged.

19. This is declared by Brihaspati: "Land, obtained by acceptance of gift must not be given to the son of a Kshatriyá or other wife of inferior class; even though his father give it to him, the son of the Bráhminí may resume it, when [his father is] dead". [4] And thus land, obtained by acceptance of gift, is the same which has been termed [by Manu] land received as a pious gift (brahmá dáya): for the study of the Vedas (here signified by the term "brahma"), and the knowledge of their meaning, have been propounded as qualifications for the receipt of gifts.

20. It is not land which has been received as a present, according to the text of Manu: "To Bráhmins returned from the abode of their preceptors, let the king show due respect; for the Vedic observance by kings is pronounced imperishable"; [5] since this assumes the form of a token of respect.

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[1] Brihaspati, XXV. 29.
[2] Baudháyana, II. 2, 3, 12 and 13.
[3] II. Cole. Dig., 317, CLXII.
[4] Brihaspati, XXV. 30.
[5] Manu, VII. 82.

21. Or else, this land is excepted by the one author, as the other is by the other.

22. But the land of a Bráhmin is not universally a holy heritage (bráhma dáya): for it is expressly declared, that sons of twice-born classes have a right to the hereditary field; and the Súdrá is alone excluded. So Brihaspati states: "The son, begotten on a Súdrá woman by any man of a twice-born class, is not entitled to a share of land; but one, begotten on her, being of equal class, shall take all the property; thus is the law settled".[1]

23. Since land only is mentioned, it follows that a Súdrá son has no right to land acquired by his father, being of a regenerate class through purchase, or through favour, or through other means.

24. A Súdrá, being the only son of a Bráhmin, is entitled to a third part and two parts go to the sapiṇḍas; or, on failure of them, to the sakulyas, or, if there be none, to the person, who performs the obsequies. So Devala ordains: "A Nisháda, being the only son of a Bráhmin, shall have a third part and let the sapiṇḍa or sakulya, who performs the obsequies, take the two [remaining] shares".[2]

25. The son, begotten by a Bráhmin on a Súdrí, is termed a Nisháda. The difference between the sapiṇḍa and the sakulya will be explained subsequently.

26. If a Súdrá be the only son of a Kshatriyá or of a Vaisyá, he takes half of his estate; and the next heirs, according to the order of succession subsequently explained in regard to the estate of one who has no male issue, shall take the other half. So Vishṇu says: "A Súdrá, being the only son of any twice-born man, takes half his property; and the other half devolves as the estate of a childless man would devolve".[3]

27. Here the right to a third part, or the succession to half the estate, must be understood as restricted to the case of a person endowed with science, morality and virtue. For Manu says: "Whether he have sons, or have no sons, by other wives, no more than a tenth part must be given to his son by a Súdrá wife".[4] Since more than a tenth part is by this text forbidden, although there be no son belonging to a regenerate class, it appears that the preceding text relates to an excellent only son by a Súdrá woman. As for the prohibition of his participating in the estate, as declared by Manu: ("The son of a Bráhmin, a Kshatriyá, or a Vaisyá, by a woman of the servile class, shall not share the inheritance: whatever his father may give him, let that only be his property".)[5] it must be explained as implying, that the property, received by

[1] Brihaspati, XXV. 32.
[2] II. Cole. Dig., 320, CLXV.
[3] Vishṇu, XVIII. 32—33.
[4] Manu, IX. 154.
[5] Manu, IX. 155.

him through his father's favour, amounts to a tenth part of the estate.

28. A passage of Brihaspati states: "The virtuous and obedient son, borne by a Súdrá woman, to a man who has no other offspring, should obtain a maintenance; and let the sapiṇḍas take the residue of the estate":[1] which signifies, that something should be given, to enable him to practise agriculture or some other profession adapted to procure a subsistence; but to one deficient in good qualities, food and other necessaries, as means of subsistence, may be given, in consideration of his behaving with obedience like a pupil. Thus a passage of Manu declares: "A son begotten through lust on a Súdrá woman by a man of the Bráhmin class, is even as a corpse though alive, and is thence called a living corpse (párasava)".[2] These passages imply that the Súdrá woman is unmarried. For a husband is enjoined to approach his wedded wife once in the proper season; and conception takes place then only, not on subsequent intercourse. Thus Yájñavalkya says: "If a brother die without male issue, let another approach the widow once in the proper season":[3] and Manu ordains: "Having espoused her in due form, she being clad in a white robe, and pure in her moral conduct, let him approach her secretly once in each proper season, until issue be had".[4] The first intercourse being the cause of pregnancy, the mention of "once" may be intended for a secular purpose: else, it must be supposed to be meant for a spiritual end. Accordingly, in the practice of the world, months are counted from the day of the first intercourse, as well for regulating auspicious observances, as for determining the performance of ceremonies restricted to particular months, as the Pumsavana and Símantonnayana. Hence, the expression "a son begotten through lust on a Súdrá", must relate to the child of an unmarried Súdrá.

29. But the son of a Súdrá by a female slave or other unmarried Súdrá woman, may share equally with other sons, by consent of the father. Thus Manu says: "A son, begotten by a man of the servile class on his female slave, or on the female slave of his slave, may take a share of the heritage, if permitted: thus is the law established."[5]

33. Without such consent, he shall take half a share: as Yájñavalkya directs: "Even a son, begotten by a Súdrá on a female slave may take a share by the choice of the father; but, if the father be dead, the brothers should make him partaker of half a share".[6]

31. Begotten on an unmarried woman, and having no brother, he may take the whole property, provided there be not a daughter's son. So Yájñavalkya ordains: "One, who has no brothers, may inherit the whole property, in default of daughter's sons".[7] But

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[1] Brihaspati, XXV. 31.
[2] Manu, IX. 178.
[3] Not found in Yájñavalkya.
[4] Manu, IX. 70.
[5] Manu, IX. 179.
[6] Yájñavalkya, II. 133 and 134.
[7] Yájñavalkya, II. 134.

if there be a daughter's son, he shall share equally with him: for no special provision occurs; and it is fit that the allotment should be equal; since the one, though born of an unmarried woman, is son of the owner; and the other, though sprung from a married woman, is only his daughter's son.

CHAPTER X.

On the participation of sons by adoption.

1. If a true legitimate son be born after the appointment of a daughter to raise up issue, the distribution to be made between them is here explained.

2. In such a case, the appointed daughter and the legitimate son take equal shares: nor is the appointed daughter entitled to a deduction of a twentieth part in right of seniority. So Manu declares: "A daughter having been appointed, if a son be afterwards born, the division of the heritage must, in that case, be equal: since there is no right of primogeniture for woman".[1] For the appointed daughter does not herself perform the functions of an eldest son, but, through her son, presents funeral oblations, as is stated by Manu: "He, who has no son, may appoint his daughter in this manner to raise up a son for him, saying, the child which shall be born of her shall be his for the purpose of performing his obsequies".[2]

3. It must not be supposed, that, if the appointed daughter first bear a son, and a legitimate son of her father be afterwards born, her son should have the allotment of an eldest son: for he is considered as a son's son. Manu intimates as much, saying, "By that male child, whom a daughter, whether formally appointed or not, shall produce from a husband of an equal class, the maternal grandfather becomes grandsire of a son's son: let that son give the funeral oblation and possess the inheritance".[3] For the appointed daughter is, as it were, a son (putra); and her son is deemed a son's son (pautra); and her father, to whom he thus appertains, becomes grandsire of a son's son. Now there has not been any mention of a peculiar allotment in right of primogeniture for the son's son.

4. As for the text of Vasishṭha, which declares the son of an appointed daughter to be an adopted son: ("This damsel, who has no brother, I give unto thee, decked with ornaments; the son, who may be born of her, shall be my son",[4]) whence it appears, that both the appointed daughter and her son are [denominated] sons: this designation of him as a son must, since it contradicts Manu, and since the offering of a funeral cake is the only quality of a son, which he possesses, be figurative: for, through him, the appointed

[1] Manu, IX. 134.
[2] *Ibid*, IX. 127.
[3] Manu, IX. 136.
[4] Vasishṭha, XVII. 17.

daughter offers the funeral oblation; and thus one actually is such, and the other is so by his means.

5. The distribution before mentioned must be understood in the case where the legitimate son and the appointed daughter are of the same class: but, if they be of dissimilar classes, a distribution between them must be made as between legitimate sons appertaining to different classes: for the true son and the appointed daughter are equal.

6. But, if a daughter, being actually appointed, become a widow without having borne a son, or if she be ascertained to be barren, she has not, in that case, a right to her father's wealth: since the appointment was made for the sake of a son, who may perform obsequies; and, on failure of that, she is similar to any other daughter.

7. In a partition among sons of the wife and the rest with a true legitimate son, such of them, as are of the same class with the [adoptive] father and superior by class to the true son, whether they be sons of an appointed daughter, or issue of the wife, or offspring of an unmarried damsel, or secretly produced, or abandoned or received with a bride, or born of a twice-married woman, or given, or self-given, or made, or bought; shall be entitled to the third part of the share of a true son. So Devala, after having described the twelve sons, expressly declares: "These twelve sons have been propounded for the purpose of offspring: being sons begotten by a man himself, or procreated by another man, or received [for adoption], or voluntarily given. Among these, the first six are heirs of kinsmen, and the other six inherit only from the father: the rank of sons is distinguished in order as enumerated. All these sons are pronounced heirs of a man who has no legitimate issue by himself begotten: but should a true legitimate son be afterwards born, they have no right of seniority. Such among them, as are of equal class, shall have a third part as their allotment: but those of a lower class must live dependent on him supplied with food and raiment".[1]

8. The true legitimate son and the rest, to the number of six, are not only heirs of their father, but also heirs of kinsmen; that is, of sapiṇḍas and other relations. The others are successors to their father, but not heirs of collateral relations.

9. They take the whole estate of a father, who has no legitimate issue by himself begotten; but, if there be a true son, such of them, as are of the same class with the father, take a third part.

10. Since the appointed daughter is equal to the true legitimate son, the same order of distribution must be observed in her case.

11. But those who are inferior by class to the father, yet superior to his legitimate son, shall take the fifth or the sixth part of a legitimate son's share, according to their good qualities, or the

[1] II. Cole. Dig., 332, CXC.

want of such qualities. Thus Manu says: "Let the legitimate sons, when dividing the paternal heritage, give a sixth part, or a fifth, of the patrimony to the son of the wife".[1]

12. Since all adopted sons are, in Devala's text, (§ 7) equal to the wife's son, the term "Kshetraja" (son of the wife) is, in Manu's text, illustrative.

13. But such as are inferior by class to the father, and to their brother, his legitimate son, are entitled only to food and raiment. So Manu declares: "The legitimate son is the sole heir of his father's estate: but, for the sake of charity he should give a maintenance to the rest".[2] Thus Kátyáyana says: "If a legitimate son be born, the rest are pronounced sharers of a third part, provided they belong to the same class [with the father]; but, if they be of a different class, they are entitled to food and raiment".[3]

14. The term "the rest" in the text of Manu, as well as the phrase "if they be of a different class" in that of Kátyáyana, signify one of inferior class, conformably with the text of Devala (§ 7).

15. Manu states the distribution between a true son, and the issue of the wife produced without due authority. "If there be two sons, a legitimate one, and the son of a wife, claiming the estate of the same person, each shall take the property which belonged to his father; and not the other."[4]

16. Let each receive the wealth of him, from whose seed he sprang: and let not the other take it, who sprang from the seed of another person. Therefore alone, Nárada says: "If two sons, begotten by two fathers, contend for the wealth of the woman, let each of them take that which was his father's property; and not the other".[5]

17. The wealth, appertaining to the woman, which was given to her by the respective fathers, let the son of each father severally take, and not the other. It would be needless to enlarge.

CHAPTER XI.

On Succession to the estate of one who leaves no male issue.

SECTION I.

On the widow's right of succession.

1. In regard [to succession] to the wealth of a deceased person, who leaves no male issue, commentators disagree in consequence of finding contradictory passages of law.

[1] Manu, IX. 164.
[2] *Ibid*, IX. 163.
[3] II. Cole. Dig., 348, CCXVIII.
[4] Manu IX. 162.
[5] Not found in Nárada in the S. B. E. Series.

2. Thus Brihaspati says: "In scripture and in the code of law as well as in popular practice, a wife is declared by the wise to be half the body of her husband, equally sharing the fruit of pure and impure acts. Of him, whose wife is not deceased, half the body survives. How then should another take his property, while half his person is alive? Let the wife of a deceased man, who left no male issue, take his share, notwithstanding kinsmen, a father, a mother, or uterine brother, are alive. Dying before her husband, a virtuous wife partakes of his consecrated fire: or, if her husband die [before her, she shares] his wealth: this is the primeval law. Having taken his moveable and immoveable property, the precious and the base metals, the grains, the liquids, and the cloths, let her duly offer his monthly, half-yearly, and other srâddhas. With presents offered to his manes, and by gift of food, &c., let her honour the paternal uncle of her husband, his spiritual parents and daughter's sons, the children of his sisters, his maternal uncles, and also old and unprotected persons, guests and females [of the family]. The sapiṇḍas and bandhus, who become her adversaries, or who injure the woman's property, let the king chastise by inflicting on them the punishment inflicted for robbery".[1]

3. By these seven slokas Brihaspati having declared that the whole wealth of a deceased man, who had no male issue, as well the immoveable as the moveable property, the gold and other effects, shall belong to his widow, although there be brothers of the whole blood, paternal uncles, [daughters], daughter's sons and other heirs, and having directed, that any of them, who become her competitors for the succession, or who themselves seize the property, shall be punished as robbers, totally denies the right of the father, the brothers and the rest to inherit estate if a widow survive.

4. Accordingly, Yâjñavalkya says: "The wife and the daughters also, both parents, brothers likewise and their sons, gentiles, cognates, a pupil and a fellow-student: on failure of the first among these, the next in order is indeed heir to the estate of one, who departed for heaven leaving no male issue. This rule extends to all persons and classes".[2] Thus affirming the right of the last-mentioned on failure of the preceding, the sage propounds the succession of the widow in preference to all the other heirs.

5. So Vishṇu: "The wealth of him, who leaves no male issue, goes to his wife; on failure of her, it devolves on daughters; if there be none, it belongs to the father; if he be dead, it appertains to the mother; on failure of her, it goes to the brothers; after them, it descends to the brother's sons; if none exist, it passes to the kinsmen (bandhu); in their default, it devolves on relations (sakulya): [failing them, it belongs to the pupil]: on failure of these, it goes to the fellow-student: and in default also of all

[1] Brihaspati, XXV. 46-52. [2] Yâjñavalkya, II. 135 and 136.

those heirs, the property escheats to the king; excepting the wealth of a Brâhmin".[1]

6. By this text also relating to the order of succession, the right of the widow to succeed in the first instance is declared. It must not be alleged that the mention of the widow is intended merely for the assertion of her right to wealth sufficient for her subsistence. For it would be irrational to assume different meanings of the same term used only once, by interpreting the word "wealth" as signifying the whole estate in respect of brothers and the rest, and not the whole estate in respect of the wife. Therefore the widow's right must be affirmed to extend to the whole estate.

7. Thus Brihat Manu says: "The widow of a childless man keeping unsullied her husband's bed, and persevering in religious observances, shall present his funeral oblation and obtain [his] entire share".[2]

8 "His" is repeated or understood from the words "his funeral oblation"; for that term alludes to her husband. The meaning therefore is, 'the wife shall obtain her husband's entire share'; not 'she shall obtain her own entire share'; for the direction, that 'she shall obtain', would be superfluous in respect of her own complete share. Since the intention of the text is to declare a right of property, it ought not to be interpreted as declaring such right in regard to the person's own share; for that is known already from the enunciation of it as that person's share.

9. Nor could it be said, that the intention of the text is to authorize the taking [or using] of the wealth [not to declare the right of property]; for the taking or using of one's own property would follow from one's natural impulses alone.

10. Nor can the text be supposed to intend a restrictive injunction [that she should take her own share]. For its purpose would be spiritual; and, if it were an injunction, a person who is commanded and other particulars [as sin in the omission, &c.] must be inferred.

11. It is alleged that, as in the passage, "let a son, who is neither blind nor otherwise disqualified, take an entire share", [the meaning is], not 'his father's entire share', but 'his own complete allotment', so, in this instance likewise, the terms are [interpreted as] relative to the widow's own complete allotment. That is not accurate; for, since there is no such passage of law as that stated, the analogy is false; or admitting that there is, still, since for the reason before mentioned it would be impertinent as a precept, [the alleged example] will be rightly interpreted as relative to the father's share.

12. Accordingly the sages do, in all instances, propound the right of a different person [as heir] to the wealth of another [who is his predecessor]; for example, that of sons to the paternal

[1] Vishṇu, XVII. 4-13.

[2] II. Cole. Dig., 535, CCCCVIII.

estate; and that of widows and the rest to the wealth of a man who leaves no male issue; and so in other cases. They do not needlessly bid a person take his own share.

13. It is alleged that by the mention of the relative, the correlative is suggested; and, thus, when the word "mother" is [singly] employed, it is not understood to intend a stranger's mother. This objection is unsound; for the maxim is applicable only where the correlative is not specified: and thus, when it is said "call Dittha's mother", neither the mother of the messenger, nor of the sender, is supposed to be meant. In like manner, since the correlative is here indicated by the pronoun in the phrase, "his funeral oblation", how can [the word "share"] refer to wife? And the incongruity of supposing the text to be an injunction, has been already shown (§ 10).

14. Therefore, Brihat Manu (§ 7) declares the widow's right of taking his [that is, her husband's] entire share.

15. Passages of various authors, which declare the contrary of the widow's right of succession, are the following. Sankha, Likhita, Paithínisi and Yama say: "The wealth of a man, who departs for heaven, leaving no male issue, goes to his brothers. If there be none, his father and mother take it; or his eldest wife, or a kinsman (sagotra), a pupil, or a fellow-student".[1]

16. Here, in contradiction to the preceding text the succession of the father and mother, if there be no brother, or that of the wife, if they be both dead, is propounded.

17. So Devala ordains: "Next, let brothers of the whole blood divide the heritage of him who leaves no male issue, or daughters equal; or let the father if he survive, or brothers belonging to the same class, or the mother, or the wife, inherit in their order. On failure of all these, the nearest of the kinsmen succeed".[2]

18. Here the contradiction is, that the brother is placed first of all the heirs, and the widow last.

19. Some reconcile the contradiction by saying, that the preferable right of the brother supposes him either to be not separate or to be reunited; and the widow's right of succession is relative to the estate of one who was separated from his co-heirs, and not reunited with them.

20. This is contrary to a passage of Brihaspati, which says: "Among brothers, who become reunited through mutual affection, after being separated, there is no right of seniority, if partition be again made. Should any one of them die, or in any manner depart [by entering into a religious order,] his portion is not lost, but devolves on his uterine brother. His sister also is

[1] II. Cole. Dig., 532, CCCCIII. [2] II. Cole. Dig., 532, CCCCIV.

entitled to take a share of it. This law concerns one who leaves no issue, nor wife, nor parent. If any one of the reunited brothers acquire wealth by science, valour, or the like, [with the use of the joint stock,] two shares of it must be given to him, and the rest shall have each a share".[1]

21. Here, since reunion of parceners is specified at the beginning and at the close of the text, the intermediate passage, "his share is not lost, but devolves on his uterine brother",[2] must be understood as relating to a reunited parcener. And the author, saying "this law concerns one who leaves no issue, nor wife nor parent",[3] declares the right of a reunited uterine brother as taking effect on failure of son, daughter, widow and parents. How then do [the reunited brothers] bar the widow's title to the succession?

22. Besides, the text states, that "his share is not lost"; and the expression is pertinent in regard to unseparated parceners and reunited co-heirs, since the lapse of the share might be supposed, because the property, being intermixed with another brother's effects, is not seen apart; but, the property of a separated co-heir being distinctly perceived in a separate state, what room is there for supposing its lapse? Therefore, these texts [of Brihaspati, *vide* 20] relate to reunited co-heirs.

23. Moreover, the inference, that the texts of Sankha and others above cited, (§ 15, &c.,) which declare the preferable right of the brother before the widow and the rest, relate to a reunited brother, [as well as an unseparated one,] must be drawn either from the authority of a text of law or from reasoning. Now it is not deducible from a text of law; for there is no special text; and the passages, concerning the succession of the reunited parcener (section 5 § 13) containing special provisions regarding the brother's succession, cannot intend generally the right of a brother to inherit [to the exclusion of a widow].

24. Since the texts of Brihaspati just now cited (§ 20) contradict that inference; for the brother's right is there declared to take effect, in the case of reunion, on failure of son, daughter, widow and parents; brothers not reunited must be the subject [of those passages [of Sankha, &c., 15]. That alone is right; and they do not relate to [unseparated and] reunited brothers.

25. But it is said that this inference is deduced from reasoning. Thus, in the instance of reunion, the same wealth, which appertains to one brother, belongs to another likewise. In such case, when the right of one ceases by his death, the wealth belongs exclusively to the survivor, since his ownership is not divested. It does not belong to the widow: for her right ceases on the death of her

[1] Brihaspati, XXV. 73, 74, 75 and 77 [2] Brihaspati, XXV. 74.
[3] Brihaspati, XXV. 75.

husband, just as his property devolves not on her, if sons or other [male descendants] be left.

26. That argument is futile. It is not true that, in the instance of reunion [and of a subsisting co-parcenary,] what belongs to one appertains also to the other parcener. But the property is referred severally to unascertained portions of the aggregate. Both parceners have not a proprietary right to the whole, for there is no proof to establish their ownership of the whole, as has been before shown. Nor is there any proof of the position, that the wife's right in her husband's property, accruing to her from her marriage, ceases on his death. But the cessation of the widow's right of property, if there be male issue, appears only from the law ordaining the succession of male issue.

27. If it be said that the cessation of her right, in this instance also, does appear from the law which ordains the succession of the reunited parceners, the answer is, no; for it is not true that the text relates to reunited parceners; since the law, which declares the brother's right of succession, may relate to reunited brothers, if it be true that the widow's right of ownership ceases by the death of her husband who was reunited with his co-heirs; and the widow's proprietary right does so cease, provided the law relate to the case of reunited brothers. Thus, the propositions are mutually dependent.

28. Besides, if the texts of Sankha, Likhita and the rest, (§ 15, &c.) relate to unseparated or reunited parceners, they must be interpreted as signifying that 'the wealth of one who is either unseparated or reunited, goes to a brother who is so; or, if there be none such, the two parents take it'. In that case, a question may be proposed, shall parents, who are separated and not reunited, take the heritage? or parents who are either unseparated or reunited? Here the first proposition is not admissible; for how can the claim of parents, who are separated and not reunited, be preferred to the wife's, since they are excluded by her, under the passage before cited? Nor is the second proposition maintainable; for all agree that a father, being unseparated or reunited, takes the heritage in preference to an unseparated or reunited brother.

29. Moreover, as in the instance of the estate of one who was separated from, and not reunited with, his father and his brother, the father has the right of succession before brothers, because he has authority over the person and wealth of his son; since he gave him life; (for their identity is affirmed in holy writ, where it is said: "he himself is born a son"): and because the deceased, by participating in funeral offerings, partakes of two oblations of food which his father must present to the grandfather and great-grandfather, for sons do not offer the half-monthly oblations of food, while their father lives; so the same rule is reasonable in the other case also. Or, since they are alike in respect of co-parcenary and reunion, the equal right of father and son would be proper, not the postponement of the father's claim to the brother's.

30. Further, the dual number expressing that 'parents, who are unseparated or reunited, take the heritage', is unsuitable: for there is neither partition, nor co-parcenary, with the mother; and consequently, no reunion of estates; since Brihaspati says: "He, who, being once separated, dwells again, through affection, with his father, brother, or paternal uncle, is termed reunited".[1] He thus shows that persons who by birth have common rights in the wealth acquired by the father and grandfather, as father, brothers, and uncle are reunited, when, after having made a partition, they live together, through mutual affection, as inhabitants of the same house, annulling the previous partition and stipulating that "The property which is mine is thine; and that which is thine is mine". The partnership of traders who are not so circumstanced, and only act in concert on a united capital, is no reunion. Nor are separated co-heirs reunited merely by junction of stock, without an agreement prompted by affection, as above stated. Therefore, since neither reunion nor co-parcenary with a mother can exist, how is the contradiction in regard to the succession devolving on her before brothers, to be reconciled?

31. Now the difficulty is removed by the wise. From the texts of Vishṇu (§ 5) and the rest, it clearly appears that the succession devolves on the widow, by failure of sons and other [male descendants]: and this is reasonable; for the estate of the deceased should go first to the son, grandson, and great-grandson. Thus Manu and Vishṇu say: "Since a son delivers [trâyate] his father from the hell called Put, therefore he is named *putra* by the Self-existent himself".[2] So Hárita says: "A certain hell is named Put; and he, who is destitute of offspring, is tormented in that hell. A son is therefore called *putra*, because he delivers his father from that".[3] Accordingly Sankha and Likhita declare: "A father is exonerated in his life-time from debt to his own ancestors, upon seeing the countenance of a living son: he becomes entitled to heaven by the birth of his son, and shifts on him his own debt. The sacrificial hearth, the three Vedas, and sacrifices rewarded with ample gratuities, have not the sixteenth part of the efficacy of the birth of the eldest son".[4] Thus Manu, Sankha, Vasishṭha, Likhita and Hárita ordain: "By a son, a man conquers worlds; by a son's son, he enjoys immortality; and, afterwards, by the son of a grandson, he reaches the solar abode".[5] So Yájñavalkya says: "The attainment of worlds, immortality and heaven depend on a son, grandson and great-grandson".[6]

32. Thus the proprietary right of sons and the rest is expressly ordained, as already inferrible from reasoning; because the wealth, devolving upon sons and the rest, benefits the deceased: since sons or other male descendants produce great spiritual benefit to their father or ancestor from the moment of their birth; and they present

[1] Brihaspati, XXV. 72.
[2] Manu, IX. 138. Vishṇu, XV. 44.
[3] II. Cole. Dig., 419, CCCIII.
[4] II. Cole. Dig., 420, VIII. and CCCVI.
[5] Manu, IX. 137. Vasishṭha, XVII. 5, etc.
[6] Yájñavalkya, I. 78.

funeral oblations, half-monthly, in due form, after his death. So Manu declares the right of inheritance to be founded on benefits conferred: "By the eldest son as soon as born, a man becomes the father of male issue, and is exonerated from debt to his ancestors; such a son, therefore, is entitled to take the heritage".[1]

33. Fron the mention of it as a reason ("therefore", &c.,) and since there can be no other purpose in speaking of various benefits derived from sons and the rest, while treating of Inheritance, it appears to be a doctrine to which Manu assents, that the right of succession is grounded solely on the benefits conferred.

34. Accordingly the term "son" extends to the great-grandson; for, as far as that degree, descendants equally confer benefits by presenting oblations of food in the prescribed form of half-monthly obsequies.

35. Else the word "son" could not quit its primary sense and a passage, declaratory of the grandson's right, must be somehow assumed. But, still, there is no separate text concerning the great-grandson.

36. Therefore, the great-grandson's right of succession is founded on benefits derived from him; and the word "son" is used illustratively.

37. Accordingly, Baudháyana says: "The paternal great-grandfather and grandfather, the father, the man himself, his brothers of the whole blood, his son by a woman of the same class, his son's son and his great-grandson: all these partaking of undivided oblations, are pronounced sapiṇḍas. Those, who share divided oblations, are called sakulyas. Male issue of the body being left, the property must go to them. On failure of sapiṇḍas, sakulyas are heirs. If there be none, the preceptor, the pupil, or the priest takes the inheritance. In default of all these, the king [takes]".[2]

38. The meaning of the passage is this: since the father and certain other ancestors partake of three funeral oblations as participating in the offerings at obsequies; and since the son and other descendants, to the number of three, present oblations to the deceased and he, who, while living, presents an oblation to an ancestor, partakes, when deceased, of oblations presented to the same person; therefore, such being the case, the middlemost [of seven,] who, while living, offered food to the manes of ancestors, and when dead, partook of offerings made to them, became the object to which the oblations of his descendants were addressed in their lifetime, and shares with them when they are deceased, the food which must be offered by the daughter's son and other [surviving descendants beyond the third degree]. Hence those [ancestors] to whom he presented oblations, and those [descendants,] who present oblations to him, partake of an undivided offering in the form of (piṇḍa)

[1] Manu, IX. 106.

[2] Baudháyana, I. 5, 11-9-14.

food at obsequies. Persons, who do partake of such offerings, are sapiṇḍas. But one distant in the fifth degree neither gives an oblation to the fifth in ascent, nor shares the offering presented to his manes. So the fifth in descent neither gives oblations to the middle person who is distant from him in the fifth degree, nor partakes of offerings made to him. Therefore, three ancestors, from the grandfather's grandfather upwards, and three descendants from the grandson's grandson downwards, are denominated sakulyas, as partaking of divided oblations, since they do not participate in the same offering.

39. This relation of sapiṇḍas [extending no further than the fourth degree,] as well as that of sakulyas, has been propounded relatively to inheritance.

40. Therefore alone, Manu likewise, after premising "Not brothers, nor parents, but sons are heirs of the father"[1] proceeds, in answer to the question why, to declare, "To three must libations of water be made, to three must oblations of food be presented; the fourth in descent is the giver of those offerings; but the fifth has no concern with them".[2]

41. But for mourning and other purposes, the relation of sapiṇḍas extends to such as partake of the remains of oblations; for that relation is defined in the Markaṇḍeya Puráṇa as founded on participation in the wipings of offerings. "Three others, from the grandfather's grandsire upwards, are declared to be partakers of the residue of oblations; they, and the person who performs the religious rite, being seventh in descent, constitute that relation, which is termed by the holy sages kinship extending to the seventh degree." The meaning here is kin which occasions impurity [on occasion of deaths and births].

42. Therefore, alone Manu likewise has said, when treating of pollution by reason of mourning, &c.: "The relation of sapiṇḍas ceases with the seventh person and that of samánodakas ends only where birth and family name are no longer known."[3] Else this passage would be in contradiction to the text before cited: "To three must libations of water be made, &c.", (§ 39).

43. But, on failure of heirs down to the son's grandson, the wife, being inferior in pretensions to sons and the rest, because she performs acts spiritually beneficial to her husband from the date of her widowhood, [and not, like them, from the moment of their birth,] succeeds to the estate in their default. Thus Vyása says: "After the death of her husband, let a virtuous woman observe strictly the duty of continence; and let her daily, after the purification of the bath, present water from the joined palms of her hands to the manes of her husband. Let her day by day perform with devotion the worship of the gods, and especially the adoration of

[1] Manu, IX. 185. [2] Manu, IX. 186. [3] Manu, V. 60.

Vishṇu, practising constant abstemiousness. She should give alms to the principal Bráhmins for increase of holiness, and observe the various fasts which are commanded by sacred ordinances. A woman, who is assiduous in the performance of duties, conveys her husband, though abiding in another world, and herself [to a region of bliss] ".[1]

44. Since by these and other passages it is declared that the wife rescues her husband from hell, and since a woman, doing improper acts through indigence causes her husband to fall [to a region of horror], for they share the fruits of virtue and of vice; therefore, the wealth devolving on her is for the benefit of the former owner: and the wife's succession is consequently proper.

45. Hence the texts of Sankha, &c., (§ 15) must be interpreted by assuming the connection of remote terms in this manner, 'The wealth of a man, who departs for heaven leaving no male issue, let his eldest [that is, his most excellent] wife take; or, in her default let the parents take it: on failure of them, it goes to the brothers'. The terms "if there be none, [that is, if there be no wife] ", which occur in the middle of the text, (§ 15) are connected both with the preceding sentence "it goes to his brothers", and with the subsequent one "his father and mother take it". For the text agrees, and the reasonableness of this has been already shown (§ 43).

46. The assumption of any reference to the condition of the brothers as unseparated or as reunited, not specified in the text, is inadmissible. Therefore, the doctrine of Jitendriya, who affirms the right of the wife to inherit the whole property of her husband leaving no male issue, without attention to the circumstance of his being separated from his co-heirs, &c., (for no such distinction is specified) should be respected.

47. The rank of wife belongs in the first place to a woman of the highest caste, for the text [of Sankha, &c.,] states, that "the eldest wife takes the wealth", (§ 15 and 45); and "seniority is reckoned in the order of the classes". Thus Manu says: "When regenerate men take wives both of their own class and others, the precedence, honour and habitation of those wives must be settled according to the order of their classes".[2] Therefore, a woman of equal class, though youngest in respect of the date of marriage, is deemed eldest. The rank of wife (patni) belongs to her, for she alone is competent to assist in the performance of sacrifices, &c. Accordingly, Manu says: "To all such married men, the wives of the same class only (not wives of a different class by any means) must perform the duty of personal attendance, and the daily business relating to acts of religion. For he who foolishly causes those duties to be performed by any other than his wife of the same class, when she is near at hand, has been immemorially

[1] II. Cole. Dig., 528, CCCC. [2] Manu, IX. 85.

considered as a mere chandála begotten on a Bráhminí". But, on failure of a wife of the same class, one of the class immediately following [may be employed in such duties]. Thus, Vishnu ordains: "If there be no wife belonging to the same class, [he may execute the business relating to acts of religion] with one of the class immediately following, in case of distress. But a regenerate man must not do so with a woman of the Súdrá class".[2] 'Execute business relating to acts of religion', should be read into this text from the preceding sentence. Therefore, a Bráhminí is the lawful wife (patní) of a Bráhmin. On failure of such, a Kshatriyá may be so, in case of distress; but not a Vaisyá, nor a Súdrá, though married to him. A Kshatriyá woman is the wife of a Kshatriyá man. In her default, a Vaisyá woman may be so, as belonging to the next following class; but not a Súdrá woman. A Vaisyá is the only wife for a Vaisyá: since a Súdrá wife is denied in respect of the regenerate classes without distinction.

48. In this manner must be understood the succession to property in the order in which the rank of wife is acknowledged. Therefore, since women actually espoused may not have the rank of wives, the following passage of Nárada intends such a case. "Among brothers, if any one die without issue, or enter a religious order, let the rest of the brothers divide his wealth, except the wife's separate property. Let them allow a maintenance to his women for life; provided these preserve unsullied the bed of their lord. But, if they behave otherwise, the brothers may resume that allowance."[3] So [this other passage] of the same author: ["On failure of heirs, the property goes to the king,] except the wealth of a Bráhmin. But a king, who is attentive to the obligations of duty, should give a maintenance to the women of such persons. The law of inheritance has been thus declared".[4] The allotment of a maintenance to the women of such person, not being of the rank of wives, and the declared right of wives to succeed to the whole estate, are not inconsistent.

49. Accordingly, Brihaspati propounds the king's right to an escheat in default of the wife: "If men of the military, commercial and servile classes die childless, leaving neither wife nor brother, let the king take the property; for he is indeed lord of all".[5] But Nárada, directing that "he should give a maintenance to the women of such persons", (§ 48) authorizes the king to take the whole estate, giving to them enough for their support. This contradiction must be reconciled by distinguishing between the wife and the espoused woman. Accordingly in passages declaratory of the wife's right of succession, the term "wife" (patní) is employed: and, in those which ordain a maintenance, the term "woman" or "spouse" or other similar word.

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[1] Manu, IX. 86 and 87.
[2] Vishnu, XXVI. 3 and 4.
[3] Nárada, XIII. 25 and 26.
[4] *Ibid*, XIII. 51 and 52.
[5] Brihaspati, XXV. 67.

50. Also in the text of Devala (§ 17), which states: "Next, let brothers of the whole blood divide the heritage of him who leaves no male issue; or daughters equal; or let the father, if he survive, or brothers belonging to the same class or the mother, or the wife, inherit in their order; but on failure of all these, the nearest of the kinsmen succeed";[1] where "daughters equal" are such as appertain to the same class [with the deceased]; and "brothers belonging to the same class" include those of the half-blood; for whole brothers are specified under the appropriate term, and the distinction would be unmeaning [as not excluding any one; or as superfluous, since whole brothers of course belong to the same class]; in this text we say, the order in which heirs are enumerated, from the whole brother to the wife, is not intended for the order of their succession; since it contradicts Vishṇu and the rest [as Brihaspati and Yájñavalkya]: but the meaning of the text is, that the heirs shall take the succession in the order declared by Vishṇu and others. To mark uncertainty in the specified order, the author has twice used the word 'or'; once in the phrase "or daughters", and again in the sentence "or let the father, &c.", and the word is also understood in other places. Thus Devala has himself shown vagueness in his own enumeration, intimating that 'either brothers, or daughters, or parents, &c., [take the succession]'.

51. As for what has been said by Báloka, concerning the text of Sankha and the rest (§ 15), that it either relates to a wife inferior in class to her husband, or supposes the widow to be young, or is relative to brothers unseparated or reunited; that author has manifested his own ignorance by thus proposing an indefinite interpretation of the law: for the doubt remains [which of the three is intended]; and neither rule could be followed in practice.

52. As for the assertion, that the text, which ordains a maintenance, is relative to an unmarried woman and concubine, that must be rejected as intending a favor to the matrons; for the scope of the precepts, which allot a maintenance to women, has been already shown.

53. Moreover, under the distinction respecting the wife as belonging to the same or to a different class, how is the contradiction regarding the succession of parents and brothers, to be reconciled? If it be by distinguishing the cases of reunion and continued separation, the same distinction may pervade the whole subject: and what occasion is there for assuming a difference relative to the wife, as belonging to the same or to another class? But the proposed distinction, founded on reunion and separation, [§ 19] has been already fully refuted by us [§ 30].

54. The distinction regarding the whole and the half blood is contradicted by Brihaspati, who says: "Let the wife of a deceased

[1] II. Cole. Dig., 532, CCCCIV.

man, who left no male issue, take his share, notwithstanding kinsmen, a father, a mother, or uterine brothers are alive".[1] Uterine brothers are brothers by the same mother [and of course of the whole blood]. The author declares the wife's right of succession, although such persons exist. By the term "his share", is understood the entire share appertaining to her husband: not a part of it only.

55. Therefore the interpretation of the law is right as set forth by us.

56. But the wife must only enjoy her husband's estate after his death. She is not entitled to make a gift, mortgage or sale of it. Thus Kátyáyana says: "Let the childless widow, preserving unsullied the bed of her lord, and abiding with her venerable protector, enjoy with moderation the property until her death. After her let the heirs take it".[2]

57. Abiding with her venerable protector], that is, with her father-in-law or others of her husband's family, let her enjoy her husband's estate during her life; and not, as with her stridhana, make a gift, mortgage or sale of it at her pleasure. But, when she dies, the daughters or others, who would regularly be heirs in default of the wife, take the estate; not the kinsmen [or sapiṇḍas]: since these, being inferior to the daughter and the rest, ought not to exclude those heirs: for the widow debars them of the succession; and, the obstacle being equally removed if her right cease or never take effect, it can be no bar to their claim.

58. Nor shall the heirs of the woman's separate property take the succession, for the right of those is relative to the property of a woman. Kátyáyana has propounded by separate texts the heirs of a woman's property; and this text would be tautology.

59. Therefore those persons, who are exhibited in a passage above cited (§ 4) as the next heirs on failure of prior claimants, shall, in like manner as they would have succeeded if the widow's right had never taken effect, equally succeed to the residue of the estate remaining after her use of it, upon the death of the widow in whom the succession had vested. At such time the succession of daughters and the rest is proper, since they confer greater benefits on the deceased than other claimants.

60. Thus (in the Mahábhárata) in the chapter entitled Dánadharma, it is said: "For women, the heritage of their husbands is pronounced applicable to use. Let not women on any account make waste of their husbands' wealth".

61. Even use should not be by wearing delicate apparel and similar luxuries: but, since a widow benefits her husband by the preservation of her person, the use of property sufficient for that

[1] Brihaspati, XXV. 48.

[2] II. Cole. Dig., 595, CCCCLXXVII. (—2).

purpose is authorized. In like manner [since the benefit of the husband is to be consulted,] even a gift or other alienation is permitted for the completion of her husband's funeral rites. Accordingly the author says, "Let not women make waste". Here "waste" intends expenditure not useful to the owner of the property.

62. Hence, if she be unable to subsist otherwise, she is authorized to mortgage the property; or, if still unable, she may sell or otherwise aliene it: for the same reason is equally applicable.

63. Let her give to the paternal uncles and other relatives of her husband presents in proportion to the wealth, at her husband's funeral rites. Brihaspati directs it, saying: "With presents offered to his manes, and by pious liberality, let her honour the paternal uncles of her husband, his spiritual parents and daughter's sons, the children of his sisters, his maternal uncles, and also old and unprotected persons, guests, and females".[1] The term "paternal uncle" intends any sapiṇḍa of her husband; "daughter's sons", the descendants of her husband's daughter; "children of his sister", the progeny of her husband's sister; "maternal uncles", her husband's mother's family. To these and to the rest, let her give presents, and not to the family of her own father, while such persons are forthcoming: for the specific mention of paternal uncles and the rest would be superfluous.

64. With their consent, however, she may also bestow gifts on the kindred of her own father and mother. Thus Nárada says: "When the husband is deceased, his kin are the guardians of his childless widow. In the disposal of the property, and care of herself, as well as in her maintenance, they have full power. But, if the husband's family be extinct or contain no male, or be helpless, the kin of her own father are the guardians of the widow, if there be no sapiṇḍas of her husband".[2] In the disposal of property by gift or otherwise, she is subject to the control of her husband's family, after his death, and in default of sons.

65. In like manner, if the succession have devolved on a daughter, those persons, who would have been heirs of her father's property in her default, take the succession on her death; not the heirs of the daughter's property.

66. The widow should give to an unmarried daughter a fourth part out of her husband's estate, to defray the expenses of the damsel's marriage. Since sons are required to give that allotment, much more should the wife, or any other successor, give a like portion.

67. Thus has the widow's right of succession been explained.

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[1] Brihaspati, XXV. 51.

[2] Nárada, XIII. 28 and 29.

SECTION II.

On the right of the daughter.

1. The daughter's right of succession on failure of the wife [is declared]. On that subject Manu and Nárada say: "The son of a man is even as himself; and the daughter is equal to the son: how then can any other inherit his property, notwithstanding the survival of her, who is, as it were, himself?"[1] Nárada particularizes the daughter: "On failure of male issue, the daughter inherits, for she is equally a cause of perpetuating the race; since both the son and daughter are the means of prolonging the father's line."[2] The author states the circumstance of her continuing the line as a reason of the daughter's succession: and the line of descendants here intends such descendants as present funeral oblations; for one, who is not an offerer of oblations, confers no benefits, and consequently differs in no respect from the offspring of a stranger or no offspring at all.

2. It is the daughter's son, who is the giver of a funeral oblation, not his son; nor the daughter's daughter: for the funeral oblation ceases with him.

3. Therefore the doctrine should be respected, which Díkshita maintains; namely, that a daughter, who is mother of male issue, or who is likely to become so, is competent to inherit; not one, who is a widow, or is barren, or fails in bringing male issue as bearing none but daughters, or from some other cause.

4. Here again, the unmarried daughter is in the first place sole heiress of her father's property. Accordingly Parásara says: "Let a maiden daughter take the heritage of one who dies leaving no male issue; or, if there be no such daughter, a married one shall inherit". In the term "married" is here implied the restriction before mentioned.

5. Thus Devala says: "To maidens should be given a nuptial portion out of the father's estate. But of him who leaves no appointed daughter, the unmarried daughter, belonging to his own class, and legitimate, shall take the inheritance, like a son".[3] The term "appointed daughter" implies also the son. "His own"; belonging to the same class with himself. "Legitimate"; his own lawful issue.

6. This is proper: for, should the maiden arrive at puberty unmarried through poverty, her father and the rest would fall to a region of punishment, as declared by holy writ. Thus Vasishṭha says: "So many seasons of menstruation as overtake a maiden feeling the passion of love and sought in marriage by persons of suitable rank, even so many are the beings destroyed by both her father and her mother; this is a maxim of law".[4] So Paiṭhínisi:

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[1] Manu, IX. 130.
[2] Nárada, XIII, 50.
[3] II. Cole. Dig., 543, CCCCXX.
[4] Vasishṭha, XVII. 71.

"A damsel should be given in marriage before her breasts swell. But, if she have menstruated, both the giver and the taker fall into the abyss of hell; and her father, grandfather and great-grandfather are born in ordure. Therefore she should be given in marriage while she is yet a girl".[1]

7. Since then the father and the rest are saved from hell by sufficient property becoming applicable to the charges of her marriage, and, being accordingly married, she confers benefits on her father by means of her son, the wealth devolving on her is for the benefit of the owner; and it is reasonable, therefore, that the property should descend to the unmarried daughter, on failure of the wife.

8. But, if there be no maiden daughter, the succession devolves on her who has, and on her who is likely to have, male issue. That is declared by Brihaspati: "Being of equal class and married to a man of like class and being virtuous and devoted to obedience, she, whether appointed or not appointed to continue the male line, shall take the property of her father who leaves no son".[2]

9. Of equal class] belonging to the same class with her father. Married to a man of like class]; this is intended to exclude one married to a man of a superior or inferior class. For, the offspring of a daughter married to a man of a higher or lower class is forbidden to perform the obsequies of his maternal grandfather and other ancestors who are of inferior or of superior rank. But one, married to a man belonging to the same class, confers benefits on her father by means of her son.

10. The son of a daughter appointed to continue the male line is, like a son, highly beneficial to his ancestor; and, through him, the appointed daughter is equal to a son: wherefore the appointed daughter and the legitimate son have an equal right of succession. But a married daughter, who was not so appointed, confers less benefit on her father than the son and the rest and is of benefit by means only of her son: it is proper, therefore, that she should succeed only on failure of other heirs down to the unmarried daughter.

11. It must not be alleged that, admitting this doctrine, the daughter, who has male issue, should alone inherit in the first instance; but, on failure of such, then a daughter who may have issue. For her son, born subsequently, might in this manner be excluded from the succession. Nor is this proper; for both equally confer benefits on their grandfather, as daughter's sons.

12. By specifying "obedience" to her husband (§ 8), the author indicates, that she is not in the state of widowhood, and that consequently she may have issue.

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[1] II. Cole. Dig., 113, XVII. [2] Brihaspati, XXV. 57.

13. In the text before cited (§ 8), the pronoun refers to the word "daughter" contained in a preceding passage. Thus, by the conditions specified, that she be "of equal class", and "married to a man of like class", &c., (§ 8) the author shows, that she does not inherit her father's wealth merely in right of her relation as daughter. Else, since the daughter's right of succession is declared by the following passage, the mention of it by the same author in the foregoing text would be a vain repetition. But a special rule, regarding what was suggested generally, is not tautology.

14. "As a son, so does the daughter of a man proceed from his several limbs. How then should any other person take her father's wealth?"[1]

15. Since a daughter's right of succession to the property of her father is founded on her offering funeral oblations by means of her son, therefore, even in the case of an appointed daughter, on whom the estate has devolved by the death of her father, should she bear no male issue in consequence of her proving barren, or because her husband is incapable of procreation, the property does not go to her husband upon her death. Thus Sankha and Likhita say: "The husband is not entitled to the wealth of his wife being an appointed daughter, if she die leaving no issue".[2] So Paithínisi: "On the death of an appointed daughter, her husband does not inherit her property: if she leave no issue, it shall be taken by her unmarried sister, or by another".[3] Hence her property is to be taken by her maiden sister, or by another sister likely to have issue. Therefore, when the succession has devolved on a female, others' claim is precluded.

16. But the following passage of Manu must be understood to be applicable on the death of an appointed daughter, who has not been destitute of male issue, having borne a son who has died. "Should a daughter, appointed to continue the male line, die by any accident without a son, the husband of that daughter may without hesitation possess himself of her property."[4]

17. Brihaspati recites the gift of the funeral oblation as the sole cause of the right in both cases: "As the ownership of her father's wealth devolves on her, although kindred exist, so her son likewise is acknowledged to be heir to his maternal grandfather's estate".[5] As the daughter is heiress of her father's wealth in right of the funeral oblation which is to be presented by the daughter's son, so is the daughter's son owner of his maternal grandfather's estate in right of offering that oblation, notwithstanding the existence of kindred, such as the father and others.

18. Nor does this text (§ 17) relate to the son of an appointed daughter: for the pronoun "her", in both the phrases, bears

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[1] Brihaspati, XXV. 56.
[2] Not found.
[3] Not found.
[4] Manu, IX. 135.
[5] Brihaspati, XXV. 58.

reference to the "daughter, whether appointed or not appointed", who was mentioned in the preceding passage (§ 8). Or, upon the principle of selecting the nearest term, the reference may properly be to the "daughter not appointed". But this term cannot be rejected to select the other.

19. Accordingly Manu propounds the daughter's origin from the person of the maternal grandfather as the reason of the daughter's son having a right to the succession; not her appointment to raise a son: else he would have specified this cause. "Let the daughter's son take the whole estate of his own father who leaves no son; and let him offer two funeral oblations; one to his own father, the other to his maternal grandfather. Between a son's son and the son of a daughter, there is no difference in law; since their father and mother both sprang from the body of the same man."[1]

20. Thus this very author expressly declares that the daughter's son, born of one not appointed to continue the male line, has the right of succession: "By that male child, whom a daughter, whether formally appointed or not, shall produce from a husband of an equal class, the maternal grandfather becomes in law the grandfather of a son's son: let that son give the funeral oblation and possess the inheritance".[2]

21. Besides, the term 'daughter's son' is in law restricted to signify the male offspring of an appointed daughter. Baudhâyana intimates that, when he says: "[Consider] another [son] the daughter's son termed son of an appointed daughter, being born of the female issue after an express stipulation".[3] Here 'consider' is understood.

22. Hence also [since such is the scope and purport of the text, § 17] Bhojadeva has cited that passage of Brihaspati under the head of succession of a daughter appointed or unappointed.

23. But Govindarâja, in his commentary on Manu, states the claim of the daughter's son as preferable to that of the married daughter, on the grounds of the following passage of Vishṇu: "If one die leaving neither son nor grandson, the daughter's son shall inherit the estate; for, by consent of all, the son's son and the daughter's son are alike in respect of the celebration of obsequies".[4]

24. This does not appear to us satisfactory: for it contradicts the text above cited (§ 8).

25. But, in default of a married daughter, such as above described, the succession assuredly devolves on the daughter's son notwithstanding the existence of the father and other kinsmen. For it appears from the comparison of his condition to heirs, (§ 17)

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[1] Manu, IX. 132, 133.
[2] Manu, IX. 136.
[3] Baudhâyana, II. 2, 3, 15.
[4] Vishṇu, XV. 46 and 47.

and more expressly from the purport of the term "likewise" in the phrase "her son likewise is acknowledged to be heir", (§ 17) that his pretensions are inferior to hers. Therefore, it is right that the succession of the daughter's son is next after the daughter.

26. By the words "although kindred exist", (§ 17) the succession of both parents, which reasonably should take effect on failure of the wife, but which is barred by the daughter and daughter's son, is hinted as taking place when no such impediment exists. Accordingly Brihaspati immediately after says: "On failure of those persons, the brothers and nephews of the whole blood are entitled to the estate, or kinsmen, or cognates, or pupils, or venerable priests".[1] Here the word "those" bears reference to the daughter's son and to the parents indicated. Therefore, it is on failure of these persons, that the succession of brothers and the rest takes place.

27. As for the assertion of Báloka, that the daughter's son inherits after the whole series of heirs specified in the passage above cited, "The wife, daughters also, &c.", (sect. 1 § 4) that is mere childish prattle; for it contradicts the text of Brihaspati (§ 17). Nor is there anything inconsistent with that enumeration of heirs; for the maiden daughter, married daughter, and daughter's son, are all signified by the term "daughters" in the plural number (sect. 1 § 4). As the word "son", in the phrase "who departed for heaven leaving no son", intends male issue down to the great-grandson, since he is equally a giver of funeral oblations, so does the term "daughter" comprehend the daughter's son, for he also is the giver of a funeral offering; or as the term "male issue", in the sentence "on failure of male issue, the daughter inherits" (§ 1) intends the widow also. Else the plural number, in the word "daughters", would be unmeaning: and the author would have used the singular number, as in the words "the wife", "the son of a brother", &c. We shall hereafter explain the intention of the plural number in the word "brothers" (sect. 1 § 4).

28. Moreover, since a series of heirs is specified from both parents to the king, it would follow, that the succession of the daughter's son takes effect on failure of the king. But there never is a vacancy of the throne; and consequently the succession could never take place.

29. Therefore the succession of the daughter's son on failure of daughters, as affirmed by Visvarúpa, Jitendriya, Bhojadeva and Govindarája, should be respected.

30. But, if a maiden daughter, in whom the succession has vested, and who has been afterwards married, die, the estate, which was hers, becomes the property of these persons, a married daughter

[1] Not found.

or others, who would regularly succeed if there were no such in whom the inheritance vested, and in like manner succeed on her death after it has so vested in her. It does not become the property of her husband or other heirs; for that is relative to a woman's stridhana. Since it has been shown by a text before cited (sect. 1 § 56) that, on the death of the widow in whom the succession had vested, the legal heirs of the former owner, who would regularly inherit his property if there were no widow in whom the succession vested, namely, the daughters and the rest, succeed to the wealth; therefore the same rule is inferred *a fortiori*, in the case of the daughter and grandson whose pretensions are inferior to the wife's.

31. Or the word "wife" is employed with a general importance and it implies, that the rule must be understood as applicable generally to the case of a woman's succession by inheritance.

32. Thus has the succession of the daughter and the daughter's son been explained.

SECTION III.

On the father's right of succession.

1. If there be no daughter's son, the succession devolves on the father; and not on the mother, nor at once on both parents. For that is contrary to Vishnu's text: "If there be none, it belongs to the father; if he be dead, it appertains to the mother".[1]

2. But the following passage of Manu, as well as that of Brihaspati, must be understood as relating to a case of failure of heirs down to the father inclusively: "Of a son dying childless, the mother shall take the estate; and, the mother also being dead, the father's mother shall take the heritage".[2] "Of a deceased son, who leaves neither wife nor male issue, the mother must be considered as heiress: or, by her consent, the brother may inherit."[3]

3. This too is a result of reasoning. The father's right of succession should be after the daughter's son and before the mother: for the father, offering two oblations of food to other manes, in which the deceased participates, is inferior to the daughter's son who presents one oblation to the deceased and two to other manes in which the deceased participates: he is preferable to the mother and the rest because he presents to others two oblations in which the deceased participates; and his superiority is indicated in a passage of Manu: "In a comparison of the male with the female sex, the male is pronounced superior".[4]

4. In the term "pitarau" (both parents) (sect. 1 § 4), the priority of the father is indicated: for the father is first suggested

[1] Vishnu. XVII. 6 and 7.
[2] Manu, IX. 217.
[3] Brihaspati, XXV. 63.
[4] Manu, IX. 35.

by the radical term "pitṛi"; and afterwards the mother is inferred from the dual number, by assuming that one term is retained.

5. Hence, the argument, that, 'the mental apprehension of a series being co-extensive with the oral recital of its component members, recital, being wanting, necessarily precludes apprehension', must be rejected as inconclusive; for it is not true, that an adequate recital is wanting and would contradict the text of Vishṇu.

6. Thus the father's right of succession has been explained.

SECTION IV.

On the mother's right of succession.

1. If the father be not living, the succession devolves on the mother: for, immediately after propounding the father's right to the estate, Vishṇu's text declares, "If he be dead, it appertains to the mother".[1]

2. This too is reasonable: for her claim properly precedes that of the brothers and the rest; since it is necessary to make a grateful return to her, for benefits which she has personally conferred by bearing the child in her womb and nurturing him (during his infancy); and also because she confers benefits on him by the bringing forth of other sons who may offer funeral oblations in which he will participate.

3. The notion, therefore, that the mother's right should precede the father's, because she is pronounced to surpass him in the degree of veneration due to her, must be rejected. For, if a superior title to veneration were the reason of a right of inheritance, the succession would devolve on the spiritual preceptor before the father; since it is said: "Of him who is the natural parent, and him who gives holy knowledge, the giver of the sacred science is the more venerable father":[2] and paternal uncles and the rest would inherit in preference to a younger brother or a nephew. Therefore the mother's right of succession is after the father.

4. By thus declaring, that the mother's succession takes place after the father of the deceased, and before the father's offspring, the author intimates, that the paternal grandmother's succession likewise takes place after the grandfather and before the grandfather's offspring. For otherwise there is a contradiction between the specified order of succession, "both parents, brothers likewise, &c." Therefore alone Manu says: "And the mother also being dead, the father's mother shall take the heritage".[3] The meaning is: being dead, that is, deceased, together with her offspring.

5. Here the particle "and", as well as "also", must be joined in construction with both parts of the sentence. Therefore the

[1] Vishṇu, XVII. 7. [2] Manu, II 146.
[3] Manu, IX. 217.

sense is 'and the mother being dead, the paternal grandmother also may take the heritage'. What then becomes of the brothers and the rest? These persons, including the paternal grandfather, are indicated by the particle "also".

6. The meaning then of the text is this: the succession of both parents takes effect in the order which has been explained, after the descendants of the deceased down to his daughter's son, and before father's own offspring. Hence the succession of the paternal grandfather and grandmother is thus shown to take place before their own offspring. Accordingly, it is not separately propounded in the text of Yájñavalkya; since the right of the paternal grandfather and grandmother is virtually declared by showing the mother's right of succession.

7. Thus the mother's right of inheritance (has been explained).

SECTION V.

On the brother's right of succession.

1. If the mother be dead, the property devolves on the brother: for Vishṇu, having declared, that, "If the father be dead, it appertains to the mother",[1] proceeds to say: "On failure of her, it goes to the brothers":[2] and here the pronoun refers to the mother. It appears also from the passage "both parents, brothers likewise", that the brother's succession takes place in the case of the death of both parents.

2. It must not be alleged, that, under the passage above cited, which states "brothers likewise and their sons", the brothers' sons, being declared heir in like manner as the brothers are, shall inherit also next to the mother. For the text of Vishṇu, declaring that "it goes to the brothers", adds "After them, it descends to the brothers' sons":[3] and in this place the pronoun refers to the brothers.

3. That too is reasonable: for the brother confers benefits on the deceased owner by offering three funeral oblations to his father and other ancestors, in which the deceased participates; and he occupies his place, as presenting three oblations to the maternal grandfather and the rest, which the deceased was bound to offer; and he is, therefore, superior to the brother's son, who has not the same qualifications. But deriving his origin from the mother, the brother, though he do possess these qualifications, is inferior to the mother; and his succession, therefore, very properly takes effect after her.

4. Besides why may not the word "likewise" be connected with the term "brother"? and thus the parents and brothers may

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[1] Vishṇu, XVII. 7. [2] Vishṇu, XVII. 8. [3] Vishṇu, XVII. 9.

have an equal right of succession; the text being interpreted 'as parents, so do brothers inherit'.

5. The question, then, must be negatived, as at variance with the text of Vishnu: and the same is to be done in the other instance likewise. So Manu also declares that brothers take the inheritance, not the nephew. "Of him who leaves no son, the father shall take the inheritance; or the brothers."[1]

6. Moreover, why has not the nephew, whose father is living, a right of succession? There is no other reason but this: that one, whose father is living, does not confer benefits, since he is incompetent to offer oblations. If then it be thus settled, how should a nephew, whose father is deceased, inherit equally with the brother, since he does not confer equal benefits? Accordingly, Devala, in a passage before cited [sect. 1 § 17] not specifying the brother's son in the series of heirs down to the half-brother, comprehending the widow, daughter equal by class, father, mother, brother of the whole blood, and brother of the half-blood, intimates that the succession of nephews and the rest takes place on failure of heirs down to the half-brother.

7. The passage, which pronounces a nephew to be as a son, ["by means of that son"][2] is intended to authorize his presenting a funeral oblation and to establish his right of succession on failure of brothers. [They do not inherit together]; for that contradicts the text above cited. Else why should not it be before the brothers?

8. Therefore, the brother alone is heir in the first instance.

9. Here again, a brother of the whole blood has the first title, under the following text [§ 10] and, even under the general rule for the brother's succession. The meaning is that the whole brother shall inherit in the first place: but, if there be none, then the half-brother; for he also is signified by the word "brother", being issue of the same father.

10. The passage alluded to (§ 9) is as follows: "A reunited [brother] shall keep the share of his reunited [co-heir,] who is deceased; or shall deliver it to a son subsequently born. But an uterine brother [shall thus retain or deliver the allotment] of his uterine relation".[3] This text of Yájñavalkya also shows that the term "brother" is applicable both to the whole and to the half-blood. Else, if it intended only the uterine brother, the author would not have specified, that "uterine brother should retain or deliver the allotment of his uterine relation": for the whole blood would be signified by the single term "brother".

11. Therefore, the succession of brothers, whether of the whole or of the half-blood, is declared by the passage before cited. But,

[1] Manu, IX. 185.
[2] Manu, IX. 182.
[3] Yájñavalkya, II. 139.

by here specifying the uterine relation, the prior right of the uterine brother is intimated.

12. The succession of the half-brother, between [the whole brother and the brother's son], as affirmed by Srikara and Visvarúpa, should be respected, for he is inferior to the whole brother, who presents oblations to six ancestors which the deceased was bound to offer, and also presents three oblations to the father and others, in which the deceased participates; while the half-brother only presents three oblations in which the deceased participates: and he is superior to the nephew, because he surpasses him in the conferring of benefits, since he offers three oblations in which the deceased participates.

13. In answer to the inquiry whether the half-brother, though reunited in co-parcenary, be inferior or not to the whole brother, Yájñavalkya says: "A half-brother, being again associated, may take the succession; not a half-brother, though not reunited: but one united [by blood, though not by co-parcenary,] may obtain the property; and not [exclusively] the son of a different mother".[1]

14. The meaning of the text is this: 'A brother by a different mother, but associated again in co-parcenary, shall first take the inheritance; not generally any half-brother'. The latter part of the text is in answer to the question, whether, inheriting first, he excludes the whole brother or takes the succession jointly with him? 'The whole brother, though not reunited in parcenary, shall take the heritage'; not exclusively the son of a different mother, though reunited. Or the term "united" may signify whole brother. Accordingly, the text is so read in the citation of it by Jitendriya as a passage of Vriddha Yájñavalkya: and, in that case, the term "associated" is understood from the preceding sentence.

15. Therefore, the half-brother, who is again associated in co-parcenary, shall not take the succession exclusively; but the whole brother [shares it] though not associated. Such is the meaning: and consequently, the whole brother, who is not reunited in parcenary, and the half-brother, who is associated, should divide the succession. Accordingly, the author has employed the particle "but".

16. An objection is stated by Srikara Misra. The maxim, that "the reunited brother shall keep the share of his reunited co-heir", (§ 11) is independent, as it applies to the case of reunited half-brothers exclusively; and, in like manner, the maxim that "the uterine brother retains the allotment of his uterine relation," (§ 10) bears no reference [to any other rule], when it is applicable to the case of unassociated whole brothers only: but, when there is a half-brother associated and a whole brother unassociated, if the two maxims be applied to this case in consequence of finding both descriptions of brothers, then both maxims take effect with reference to each other. Now it is not right to make the same rule operative

[1] Yájñavalkya, II. 140.

with and without reference to another maxim; for this argues variableness in the precept. Thus it is shown in the disquisition on the passage "dvayoh praṇayanti", that the prohibition, relatively to two sacrifices, of the use of the uttara-vedi or northern altar, directed generally for the four sacrifices, is not a prohibition; for, if the precept concerning the northern altar be taken with reference to the [denial, implying consequently] an option, in the instance of two sacrifices, and be taken absolutely and without reference to any other maxim in the instance of the two other sacrifices, there would be variableness in the precept. [a] So, in regard to the subject under consideration, the maxims, that "the reunited brother shall keep the shares of his reunited co-heir", and that "the uterine brother shall retain the allotment of his uterine relation", (§ 10) are applicable in those cases in which the rules are operative independently of any other: but, if there be a half-brother associated and a whole brother unassociated, the two rules are not applicable in this instance; and it would follow that no one could take the estate. Therefore it is, where the associated half-brother might be supposed to be heir of his associated parcener, under the rule, that "a reunited brother shall keep the share of his reunited co-heir", the maxim that "the uterine brother shall retain the allotment of his uterine relation", serves as an exception to that rule. Thus the half-brother, though associated, cannot be supposed to be heir, if there be a brother of the whole blood. Then, how does the succession go? The whole brother, whether reunited or not reunited in co-parcenary, inherits the property.

17. That is not consistent: for it is not true that there is variableness in a precept, merely because two [rules], which are severally applicable to two [cases], become applicable in a single instance at the same time.

18. Thus, in respect of the precepts enjoining the votary to bestow his whole wealth as a gratuity in one instance, and no gratuity in the other, which are respectively applicable independently of each other, if either the priest doing the functions of Udgátṛu, or the one performing the office of Pratistotṛu, singly stumble, but, if both those priests should stumble at the same time, neither injunction would be applicable; for that would be a variableness in the precept.

19. In like manner, under the precepts, which direct the priest to touch an oblation with the prayer denominated Cháturhotra at the full moon, and with the prayer termed Pañchahotra at the new moon, an oblation of curds consecrated to Indra is understood in the sacrifice named Upánsu-yága, and an offering of milk consecrated to Indra is similarly understood at the Agníshomíya sacrifice; and, both precepts being thus severally applicable in those instances, neither of them would take effect at the Agneya sacrifice, since there would be variableness in the precept if both were applied to this case.

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[a] Variableness in the precept] see note (*a*), p. 42, Vol. I.

20. Therefore, the definition of variableness in a precept is its being a positive injunction without reference to any opposition in one instance, and [an eventual one] with reference to the opposition of a different precept in another instance. Thus, in the example stated, (§ 16) the prohibition bears reference to the injunction concerning the altar, expressed in these words "At this sacrifice prepare the uttara-vedi". Without opposition to that, it would be no precept. Therefore, it is a command which bears reference to the injunction respecting the altar. Nor is it in constant opposition to it, for, were it so, the prohibition would be useless; since, without the prohibition the omission of the altar might be deduced. Therefore, even the injunction concerning the altar is a command which bears relation to the contrary prohibition; but, in regard to two of the periods of sacrifice, it is independent of any other rule. Consequently, there is variablenesss in the precept; and an alternative must be inferred. But, in the case of anything supposed as a matter of inclination, a prohibition is an absolute forbiddance: for the occasional omission of the act was inferrible without the aid of an express prohibition.

21. Accordingly, the passages which direct that the Shoḍasin shall be taken, and that it shall not be taken, give rise to an alternative.

22. But, according to the doctrine of those who affirm that an alternative is inferred by this reasoning; namely, that since a prohibition implies a previous supposition [to the contrary], the [negative] precept does not obviate the cause; an alternative would be inferrible even in the instance of a prohibition concerning that which was suggested only as a matter of spontaneous choice: for example, the passage which expresses: "The priest makes not two [portions of an oblation of liquid butter] when a victim is offered; [nor at the sacrifice with acid asclepias]", and other similar passages.

23. Moreover, since an effect cannot preclude its own cause, how can there be in one case opposition; for the precepts are not equipollent. But, admitting that such is the nature of prohibition, that it eradicates its own cause, it should eradicate it altogether, for [the precept, which suggested] the previous supposition, is of inferior cogency.

24. But they affirm that this prohibition concerns the supposition of something which spontaneous choice may suggest, and is not a forbiddance of any thing deduced from a precept. That is an assertion which argues extreme ignorance: for it would follow that an alternative does not exist; since the practice of what is commanded by precept, and the prohibition of a practice not commanded by precept, cannot be in opposition at the same time. The prohibition too would not be essential to the act of religion, since the practice of something suggested by spontaneous choice is not supposable as an essential part of a religious act.

25. Therefore, an alternative is inferred according to the reasoning set forth by us. But let that be; for why expatiate?

26. As for the remark of the same author, who says (§ 16) that 'if there be a half-brother associated and a whole brother unassociated, in which case the half-brother might be supposed to be the heir under the rule, that "a reunited brother shall keep the share of his reunited co-heir", (§ 10) then the maxim, that the uterine brother shall retain the allotment of his uterine relation, (§ 10) serves as an exception to that rule'; that is unsuitable, for, in this very case, the rule concerning the reunited co-heir might on the contrary serve as an exception to the maxim, that "the uterine brother shall retain the allotment of his uterine relation", under which the whole brother might be supposed to be the heir: since there is not in this instance any ground of preference.

27. But this author's interpretation of the text "A half-brother being again associated, &c., (§ 13) as explanatory of the passage "a reunited brother shall keep the share of his reunited co-heir",[1] is quite wrong: for, the intended purport being conveyed in that text, the passage in question would become superfluous.

28. Moreover, the exposition of the text as signifying 'Let not the half-brother, who is an associated half-brother, take the estate; but the whole brother, who is not reunited, shall positively take it; a son of a different mother, though united, shall not inherit,' is also erroneous, for the same term, 'half-brother' in the first part of the text, is needlessly repeated; and the phrase 'son of a different mother', in the latter part of it, becomes superfluous; and the particle *api* is taken in the sense of "positively".

29. Besides, under the interpretation of the passage concerning the uterine brother as an exception to the claim of the associated half-brother if a whole brother unassociated exist, and its consequent inapplicableness to the case of a whole brother and half-brother both unassociated, these would have an equal right of succession, or else the property would belong to neither of them.

30. But, if the passage concerning the uterine brother be applicable to this case also, then the objection of variableness in the precept may be retorted on you; for the passage, concerning the reunited brother, bears reference to opposition in one case and bears no reference to opposition in another case; in like manner, as it is declared that the general rule for preparing the vedí or altar at a sacrifice with the soma plant, must be understood as applicable to sacrifices in which the use of the altar has not been otherwise directed; since there would be variableness in the precept, if it operate in the case of the Díkshiníya and other similar sacrifices, in bar of a command forbidding the altar suggested by the extension of a rule, but in other instances operate without bar to any thing else.

[1] Yájñavalkya, II. 139.

31. But, according to our interpretation, there is no variableness in the precept, even as that is understood by Srîkara: for the passages concerning the reunited brother and the uterine brother (§ 10) are relative severally to different cases; and that regarding "a half-brother again associated" (§ 13) declares the equal participation of a whole brother unassociated and a half-brother associated. Thus the meaning of the first part of that text is, 'a half-brother, being reunited in co-parcenary, shall take the succession, although a whole brother not reunited exist; but a half-brother, who is not reunited, shall not inherit'. The latter part of the text is in answer to the question, does not the whole brother inherit in that case? 'Though not reunited, the whole brother shall take the heritage; and not exclusively the son of a different mother who is again associated. But it shall be taken and shared by both.' Thus the alleged variableness in the precept is obviated.

32. So, Manu likewise shows the same rule of succession. "His uterine brothers and sisters, and such brothers as were reunited after a separation, shall assemble together and divide his share equally." [1]

33. Reciprocation being indicated by the plural number, in the term "uterine brothers", as respecting these exclusively, and in the words "brothers reunited", as relating to the half-brothers, the words "assemble together" are properly employed to mark association of both [descriptions of brothers]; for they would otherwise be unmeaning terms. Therefore it is from mere ignorance that it has been asserted, that both [do not inherit together], because reciprocation is not expressed by the text. Moreover, since the text exhibits the conjunctive particle "and" in the phrase "and such brothers as were reunited, &c.", and the rule expresses that a conjunctive compound is used when the sense of the conjunctive particle is denoted; the assertion that reciprocation is not stated by the text, would imply that even the conjunction does not bear that sense.

34. Therefore, if whole brothers and half-brothers only be the claimants, the succession devolves exclusively on the whole brothers. Accordingly, Brihat Manu says: "If a son of the same mother survive, the son of her rival shall not take the wealth. This rule shall hold good in regard to the immoveable estate. But, on failure of him, [the half-brother] may take the heritage". [2]

35. This rule shall hold good in regard to the immoveable estate. This rule is relative to divided immoveables. For, immediately after treating of such [property], Yama says: "The whole of the undivided immoveable estate appertains to all the brothers, but divided immoveables must on no account be taken by the half-brother". [3]

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[1] Manu, IX. 212. [2] II. Cole. Dig., 554, CCCXXVIII.
[3] II. Cole. Dig., 559, CCCCXXXI.

36. All the brothers] whether of the whole blood or of the half-blood. But, among whole brothers, if one be reunited after separation, the estate belongs to him. If an unassociated whole brother and reunited half-brother exist, it devolves on both of them. If there be only half-brothers, the property of the deceased must be assigned in the first instance to a reunited one; but, if there be none such, then to the half-brother who is not reunited.

37. Accordingly, the plural number is employed in the term "brothers", (sect. 1 § 4) for the purpose of indicating the succession of all descriptions of them, in the order here stated. Else, it would be unmeaning.

38. The text, "a reunited [brother] shall keep the share of his reunited co-heir", (§ 10) is intended to provide a special rule governed by the circumstance of reunion after separation, and applicable to the case where a number of claimants in an equal degree of affinity occurs.

39. Hence, if there be competition between claimants of equal degree, whether brothers of the whole blood, or brothers of the half-blood, or sons of such brothers, or uncles, or the like, the reunited parcener shall take the heritage: for the text does not specify the particular relation; and all [these relations] were premised in the preceding text (sect. 1 § 4); and a question arises in regard to all of them. Therefore, the text must be considered as not relating exclusively to brothers.

40. Thus the brother's right of succession has been explained.

SECTION VI.

On the nephew's right of succession, and that of other heirs.

1. On failure of brothers, the brother's son is heir: for the text of Vishṇu, having declared "it goes to the brothers", proceeds: "After them, it descends to the brother's sons".[1]

2. Among these, the succession devolves first on the son of a uterine brother; but, if there be none, it passes to the son of the half-brother. For the text expresses: "An uterine [brother] shall retain or deliver the allotment of his uterine relation", (sect. 5 § 10). Indeed the son of the half-brother, being a giver of oblations to the father of the late proprietor, together with his own grandmother, to the exclusion of the mother of the deceased owner, is inferior to a son of a whole brother.

3. Nor can it be pretended that the stepmother, grandmother and great-grandmother take their places at the sráddha, in consequence of [ancestors being deified] with their wives: for the terms "mother", &c., bear the original sense of 'his own natural mother', 'father's natural mother', and 'grandfather's natural mother', and

[1] Vishṇu, XVII. 9.

it is by those terms that they are described as taking their places at the srâddha. Thus, it is said, "A mother tastes with her husband the srâddha consisting of oblations to the manes; and the paternal grandmother with her husband; and the paternal great-grandmother with hers". But the introduction of step-mothers and the rest to a place at the periodical obsequies, is expressly forbidden. Thus the sage declares: "Whosoever die, whether man or woman, without male issue, for such person shall be performed funeral rites peculiar to the individual, but no periodical obsequies".

4. Besides, the command for the celebration of the srâddha, in honour of ancestors with their wives, is of invariable exigency, as it is universally acknowledged: but, since there are not step-mothers in every instance, the precept must relate to the natural mother; for the association of the variable and invariable exigency of the same command would be a contradiction.

5. Since the paternal uncle, like the nephew of the whole blood, offers two oblations, which the owner was bound to present, to two ancestors with their wives, should not the succession devolve equally on the uncle and nephew of the late proprietor? The answer is, the paternal uncle is indeed a giver of oblations to the grandfather and great-grandfather of the proprietor; but the nephew is giver of two oblations to two ancestors, including the owner's father who is principally considered. He is therefore a preferable claimant, and inherits before the uncle.

6. Accordingly, the brother's grandson excludes the paternal uncle; for he is not giver of oblations to the deceased owner's father, who is the person principally considered.

7. But the brother's great-grandson, though a lineal descendant of the owner's father, is excluded by the paternal uncle: for he is not a giver of oblations, since he is distant in the fifth degree. Thus Manu says: "To three must libations of water be made, to three must oblations of food be presented; the fourth in descent is the giver of those offerings: but the fifth has no concern with them".[1] By this passage, the fifth in descent is debarred.

8. But, on failure of heirs of the father down to the great-grandson, it must be understood that the succession devolves on the father's daughter's son, in like manner as it descends to the owner's daughter's son.

9. The succession of the grandfather's and great-grandfather's lineal descendants, including the daughter's son, must be understood in a similar manner, according to the proximity of the funeral offering: since the reason stated in the text: "For even the son of a daughter delivers him in the next world, like the son of a son",[2] is equally applicable; and his father's or grandfather's daughter's son, like his

[1] Manu, IX. 186.

[2] Manu, IX. 139.

own daughter's son, saves his manes from hell by offering oblations of which he may partake.

10. Accordingly, Manu has not separately propounded their right of inheritance: for they are comprehended under the two passages: "To three must libations of water be made, &c.", [1] and "To the nearest kinsman (sapiṇḍa) the inheritance next belongs". [2] Yájñavalkya likewise uses the term "gentiles" or kinsmen (gotraja) for the purpose of indicating the right of inheritance of the father's and grandfather's daughter's son, as sprung from the same line, in the relative order of the funeral oblation; and for the further purpose of excluding females related as sapiṇḍas, since these also sprang from the same line.

11. Accordingly, Baudháyana, after premising "A woman is entitled", proceeds "not to the heritage; for females, and persons deficient in an organ of sense or member, are deemed incompetent to inherit". [3] The construction of this passage is 'a woman is not entitled to the heritage'. But the succession of the widow and certain others takes effect under express texts, without any contradiction to this maxim.

12. On failure of any lineal descendant of the paternal great-grandfather down to the daughter's son who might present oblations in which the deceased would participate, to intimate that, in such case, the maternal uncle shall inherit in consequence of the proximity of oblations, as presenting offerings to the maternal grandfather and the rest, which the deceased was bound to offer, Yájñavalkya employs the term, "cognates" (bandhus). But Manu has indicated it only by a passage declaratory of succession according to the nearness of the oblation.

13. Since the maternal uncle and the rest present three oblations to the maternal grandfather and other ancestors, which the deceased was bound to offer, therefore the property should devolve on the maternal uncle and the rest, for it is by means of wealth, that a person becomes a giver of oblations. Two motives are indeed declared for the acquisition of wealth: one temporal enjoyment, the other the spiritual benefit of alms, and so forth. Now, since the acquirer is dead and cannot have temporal enjoyment, it is right that the wealth should be applied to his spiritual benefit. Accordingly, Brihaspati says: "Of property which descends by inheritance, half should carefully be set apart for the benefit of the deceased owner to defray the charges of his monthly, six-monthly and annual obsequies". [4] So Apastamba ordains: "Let the pupil or the daughter apply the wealth to religious purposes for the benefit of the deceased". [5] By saying "to defray the charges of his monthly obsequies", &c., his participation, and by directing

[1] Manu, IX. 186.
[2] *Ibid*, IX. 187.
[3] Not found.
[4] Brihaspati, XXV. 61.
[5] Not found.

"religious purposes" his spiritual benefit, are stated as reasons. Accordingly, the sage says: "Wealth is useful for alms and for enjoyment". It is reasonable, therefore, that, on failure of kindred who might present oblations in which he would participate, the succession should devolve on the maternal uncle and the rest, who present oblations which he was bound to offer.

14. Accordingly, Manu considering that purport as sufficiently indicated by the two passages above cited, "To three must libations be made, &c.", "To the nearest kinsman the inheritance next belongs"; (*vide* § 7 and 17) proceeds thus: "Then, on failure of such kindred, the sakulya shall be the heir, or the spiritual protector, or the pupil".[1]

15. The distant kinsman (sakulya) is the descendant of the paternal grandfather's grandfather or the remote ancestor. Such relatives are denominated samánodakas. Their order of succession is in the series as exhibited. On failure of such heirs, the succession devolves on the spiritual preceptor, the pupil, &c.

16. Otherwise, how is the admission of maternal uncles and others affirmed without contradiction to Manu? Therefore, this meaning is intended by him in the passage above cited; and there is no contradiction.

17. Accordingly, having declared, while treating of inheritance, "To three must libations of water be made; to three must oblations of food be presented; the fourth in descent is the giver of those offerings; but the fifth has no concern with them";[2] he adds: "To the nearest kinsman (sapiṇḍa) the inheritance next belongs"; for the purpose of showing, that the fifth in descent, not being connected even by a single oblation, is not the heir, so long as a person connected by a single oblation, whether sprung from the father's or the mother's family, exists. Otherwise, since the relation of sapiṇḍa has been declared by a distinct text, and the right of the fourth in descent to inherit is declared by the text: "To the nearest kinsman the inheritance next belongs"; the passage, which begins "To three must libations be made, &c.", would be superfluous. It cannot be said, that it is intended to direct the celebration of srâddha in honour of three ancestors: for it is inserted in the midst of a disquisition concerning inheritance; and the srâddha is ordained by a different text. Thus Manu says: "Let the householder honour the sages by duly studying the Veda; the gods by oblations to fire as ordained by law; the manes, by pious obsequies; men, by supplying them with food; and spirits, by gifts to all animated creatures".[4]

18. Nor should it be pretended that the text is intended to indicate nearness of kin according to the order of birth, and not

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[1] Manu, IX. 187.
[2] *Ibid*, IX. 186.
[3] Manu, V. 60.
[4] *Ibid*, III. 81.

according to the presentation of offerings: for the order of birth is not suggested by the text. But Manu, declaring that oblations of food, as well as libations of water, are to be offered to three persons, and that the fourth in descent is a giver of oblations, but neither is the fifth in ascent a receiver of offerings, nor the fifth in descent a giver of them, thus declares nearness of kin, and shows that it depends on superiority of presentation of oblations.

19. Therefore, a kinsman who is allied by a common oblation as presenting funeral offerings to three persons in the family of the father, or in that of the mother, of the deceased owner, such kinsman having sprung from his family though of different male descent as his own daughter's son or his father's daughter's son, or having sprung from a different family as his maternal uncle or the like, [is heir]: and the next ("To three must libations of water be made", &c., § 7) is intended to propound the succession of such kinsmen; and the subsequent passage ("To the nearest sapiṇḍa", &c., § 17) must be explained as meant to discriminate them according to their degrees of proximity.

20. The order of succession then must be understood in this manner: on failure of the father's daughter's son or other person who is a giver of three oblations which the deceased shares or which he was bound to offer, the succession devolves in the next place on the maternal uncle and others who offer oblations to the maternal grandfather and the rest which the deceased was bound to present.

21. But on failure of kin in this degree, the distant kinsman 'sakulya' is successor. For Manu says: "Then, on failure of such kindred the distant kinsman shall be the heir, or the spiritual preceptor, or the pupil".[1]

22. Among these claimants, the grandson's grandson and the rest are nearest, since they confer benefits by means of the residue of oblations which they offer. On failure of such, the offspring of the paternal grandfather's grandfather inherits in right of oblations presented to the paternal grandfather's grandfather and other ancestors who are sharers of the residue to oblations which the deceased was bound to offer.

23. If there be no such distant kindred, the samánodakas, or kinsmen allied by common libation of water, must be admitted to inherit, as being signified by the term "sakulya".

24. On failure of these, the spiritual preceptor is the successor. In default of him, the pupil is heir, by the text of Manu, "or the spiritual preceptor or the pupil" (§ 14). On failure of him likewise, the fellow-student, by the text [of Yájñavalkya], "a pupil and a fellow-student" (sect. 1 § 4).

25. In default of these claimants, persons bearing the same family name (gotra) are heirs. On failure of them, persons

[1] Manu, IX. 187.

descended from the same patriarch are the successors. For the text of Gautama states: "Persons allied by funeral oblations, family name and patriarchal descent, shall share the heritage".[1]

26. On failure of all heirs as here specified, let Brahmins take the estate. Thus Manu says: "On failure of all those, the lawful heirs are such Bráhmins, as have read the three Vedas, as are pure in body and mind, and as have subdued their passions. Thus virtue is not lost".[2] Virtue which would be extinguished by the ample enjoyment [of its reward,] but is renewed by the acquisition of fresh merit through the circumstance of his wealth devolving on Bráhmins, is not lost. Here also the author indicates the appropriation of the property for the benefit of the deceased.

27. In default of them, the king shall take the wealth, excepting, however, the property of a Bráhmin. A failure of descendants from the same patriarch and of persons bearing the same family name, as well as of Bráhmins, must be understood as occurring when there are none inhabiting the same village: else an escheat to the king could never happen.

28. If the right of the father's daughter's son, and of the maternal uncle and the rest, be not considered as intended by the text, "To three must libations of water be made, &c., (§ 7) they would have no right of succession, since they have not a place among distant kinsmen and others, whose order of succession is specified. Nor can this be deemed an admissible inference, since they are indicated by Yájñavalkya under the terms "Gentiles and cognates" (sect. 1 § 4). Consequently, it must be affirmed that they have been indicated by Manu in this text (§ 7). Therefore, such order of succession must be followed, as will render the wealth of the deceased most serviceable to him.

29. Accordingly, the equal right of the son, the son's son and the son's grandson, is proper: for their equal pretensions are declared in the text, "By a son a man conquers worlds", &c.,[3] (sect. 1 § 31) and in other similar passages. They equally present oblations to the deceased. Hence also the grandson and great-grandson, whose fathers are living, do not inherit, for they do not confer benefits, since they are forbidden to celebrate the periodical obsequies by skipping the surviving father, the law providing, that oblations shall not be presented, overpassing a living person. Otherwise, these would have the same right of inheritance with those whose fathers are deceased. Or the son alone would inherit as nearest of kin in the order of birth, to the exclusion of the son's son and son's grandson. Neither is there any express text declaratory of the equal rights of three descendants, son, grandson and great-grandson. Therefore, it

[1] Gautama, XXVIII. 21. [2] Manu, IX. 188.
[3] Manu, IX. 137.

must be inferred that the parity in their right of inheritance arises from the equal benefits conferred by them.

30. In like manner, the appropriation of the wealth of the deceased to his benefit, in the mode which has been stated, should in every case be deduced according to the specified order.

31. This doctrine must be admitted to have the assent of Manu and other sages: for there can be no other purpose of propounding, under the head of "inheritance", the superior benefits derived from sons and the rest; and the exoneration of the father from debt is stated as a reason for the son's inheriting: ("By the eldest son a man is exonerated from debt to his ancestors; therefore that son is entitled to take the heritage",[1] (sect. 1 § 32), redemption also is exhibited as a cause of succession to property: ("Even the son of a daughter delivers him in the next world like the son of a son".)[2] And there is no other reason for the equal right of inheritance of three descendants, the son and the rest, besides their deliverance [of their ancestors]; and the passage, "To three must libations of water be made, &c.", (§ 7) would be unnecessary [if such were not the purpose]; and the exclusion of persons impotent, degraded, blind from their birth, and so forth, is an apposite rule as founded upon their rendering no services; and it is troublesome to establish an assumed precept for debarring those before whom an heir intervenes; and it is reasonable that the wealth, which a man has acquired, should be made beneficial to him by appropriating it according to the degree in which services are rendered to him.

32. This doctrine, as illustrated by the irreproachable Udyota, should be respected by the wise.

33. If the learned be yet not satisfied, this doctrine may be derived from express passages of law. Still the same interpretation of both texts [of Manu, § 7 and 17] must be assumed. But let this be. What need is there of expatiating?

34. Excepting the property of a Bráhmaṇa, let the king take the wealth [on failure of heirs]. So Manu directs: "The property of a Bráhmin shall never be taken by the king: this is a fixed law. But the wealth of the other classes on failure of all [heirs], the king may take".[3] By the term "all" is signified every heir including the Bráhmin (§ 26).

35. The goods of a hermit, of an ascetic, and of a professed student, let the spiritual brother, the virtuous pupil and the holy preceptor take. On failure of these, the associate in holiness, or person belonging to the same order, shall inherit. Thus Yájñavalkya says: "The heirs of a hermit, of an ascetic and of a professed

[1] Ma IX. 106. [2] Manu, IX. 139.
[3] Manu, IX. 189.

student, are, in their order, the preceptor, the virtuous pupil, and the spiritual brother and associate in holiness".[1]

36. Wealth, such as they may happen to possess, should be delivered in the inverse order of this enumeration. The student must be understood to be a professed one: for, abandoning his father and relations, he makes a vow of service and of dwelling for life in his preceptor's family. But the property of a temporary student would be inherited by his father and other relations.

37. Thus has the distribution of the wealth of one, who leaves no male issue, been explained.

CHAPTER XII.

On a second partition of property after the reunion of co-parceners.

1. Next the partition of the property of reunited co-parceners is explained. On that subject Manu and Vishṇu say: "If brothers, once divided and living again together as parceners, make a second partition, the shares must in that case be equal: there is not in this instance any right of primogeniture".[2]

2. The shares must be equal]; this supposes reunion of brothers belonging to the same caste. But, in the case of association of brothers appertaining, the one to the sacerdotal, and the other to the military class, the rule of distribution must be understood to conform with the original allotment of shares: for the text is intended only to forbid an elder brother's superior portion as before allotted to him. Accordingly, Brihaspati saying: "Among brothers, who, being once separated, again live together through mutual affection, there is no right of seniority when partition is again made",[3] prohibits only the assignment of a superior share to the eldest, but does not ordain equality of allotments.

3. Reunited co-parceners are described by Brihaspati: "He, who, being once separated, dwells again through affection with his father, brother or paternal uncle, is termed reunited".[4]

4. A special association among persons other than the relations here enumerated, is not to be regarded as a reunion of parceners: for the enumeration would be unmeaning.

5. Other particular rules, which have been set forth under the head of partition among brothers, must be observed in this case also.

6. Thus has the right of a reunited parcener been explained.

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[1] Yájñavalkya, II. 138.
[2] Manu, IX. 210. Vishṇu, XVIII. 41.
[3] Brihaspati, XXV. 73
[4] *Ibid*, XXV. 72.

CHAPTER XIII.

On the distribution of effects concealed.

1. The distribution of that, which was concealed at the time of partition and is afterwards discovered, shall be now declared. On that subject Manu says: "When all the debts and wealth have been justly distributed according to law, anything, which may be afterwards discovered, shall be subject to an equal distribution". [1]

2. The division of it should be precisely similar to that which had been previously made: and a less share is not to be given, nor no share, to the person who concealed the property, as a punishment for his concealment. Such is the meaning of the sentence, "shall be subject to an equal distribution". Nor is the text intended to enjoin the allotment of equal shares of the property to all the parceners: for there is no reason for prohibiting the deduction in favour of the eldest, and so forth; and it would follow, that brothers belonging, one to the sacerdotal and another to the military, and the rest to other classes, would have equal shares.

3. Thus Yájñavalkya says: "Effects, which have been withheld by one co-heir from another, and which are discovered after the partition, let them again divide in equal shares: this is a settled rule". [2]

4. So Kátyáyana declares that a division shall be again made of that which has been distributed in an undue manner. "What has been concealed by one of the co-heirs, and is afterwards discovered, let the sons, if the father be deceased, divide equally with their brothers. Effects which are withheld by them from each other, and property which has been ill-distributed, being subsequently discovered, let them divide in equal shares. So Bhrigu has ordained". [3]

5. But the maxim, "Once is the partition of inheritance made", relates to the case of a fair distribution.

6. "Being subsequently discovered"] the meaning is, that what has been already divided, is not to be again distributed.

7. So Kátyáyana says: "Effects, which have been taken by a kinsman, he shall not be compelled by violence to restore: and the consumption of unseparated kinsmen, they shall not be required to make good". [4] By gentle means, and not by violence, a kinsman shall be made to restore the effects taken by him. But what has been consumed by a co-heir during co-parcenary over and above his due proportion, he shall not be required to make good.

8. In answer to those authors, who contend, that, in this case, as there is the property of another in the common effects, he, who embezzles them, is a thief and of course a sinner, the following

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[1] Manu, IX. 218.
[2] Yájñavalkya, II. 127.
[3] II. Cole. Dig., 485, CCCLXXVII.
[4] Do. do.

argument is propounded: since the accepted import of the term conveys that a thief is he, who usurps a right in the property of another, without a title [by gift, sale or other act of the owner,] being clearly conscious that the thing belongs to another; but, in the present case, the person cannot distinguish 'this is mine and that is another's', for the wealth is undivided; therefore, as donation is complete then only, when the owner, conscious that the thing is his, relinquishes it with a view to its becoming the property of another person, and that other person is sensible of his property, apprehending 'this is become mine'; but that cannot occur in respect to common wealth, and therefore common property is pronounced unfit to be given; so theft likewise is complete by the consciousness that 'this is not mine, but another's', therefore the crime of theft is not imputable to the act of embezzling what is common.

9. But the term "embezzlement or withholding" (apahára) signifies concealment; and concealment is not exactly theft; for the word "theft" is in use for an unconcealed taking. Thus Kátyáyana says: "The taking of another's wealth, whether privately or openly, by night or by day, is termed theft".[1] Accordingly it has been before declared that the withholder of the property shall not be compelled by violence to restore it (§ 7). But, if it were a theft, then, under the text which directs that "Having compelled the thief to restore the stolen goods, the king should smite him by various modes of condign punishment": admitting even that he should be made to restore the wealth by gentle means, still the smiting of him would be indispensable.

10. This too [namely, that such is the definition of theft,] appears from the sages authorizing the allotment of a share even to the withholder of common property.

11. Accordingly it is observed by Visvarúpa, 'The crime of theft is not here imputable; for the recital of the text obviates that supposition'. His meaning is, because the sense of the verb 'to steal' is not applicable to the case.

12. Hence also it is remarked by Jitendriya, in the chapter on "Expiation and penance", that 'if a man seize gold appertaining to another by mistake for iron or other matter [of little value]; or something which is not gold, mistaking it for this substance: or a thing resembling some chattel of his own but belonging to another person, by mistake for his own; in all these cases there is not a complete seizure [or wilful taking of the gold]: for, in these several instances, there is not a knowledge of its belonging to another person, being such as the thing in fact is'. In like manner, in the present instance also, the same holds good: for, previous to partition, a discriminative property, referrable to particular persons relatively to particular things, is not perceived. Consequently, there is not in this case a complete theft.

[1] Not found.

13. Or, admitting that it is a theft, the guilt of robbery is not incurred: for the text allows a share even to the person who embezzles the property. Else, in the case of embezzling gold or other valuable effects, the offender, being degraded from his class, would have no allotment.

14. If it be alleged, that, since there is no text expressly authorizing the allotment of a share to the thief who has embezzled gold to an amount sufficient to cause his degradation from his class, the rule for the allotment of a share is presumed to be applicable to the case of theft of other effects: but why may not the law which forbids the stealing of gold or the like, be rather considered as relating only to wealth appertaining to another, and not common? Still, however, there is no proof or authority on which to ground the selection [of one of these restrictions in preference to the other]. The answer to this alleged objection is as follows: in the legal definition, "the taking of another's goods is theft", "another's" signifies appertaining to a different person to the utter exclusion of any right of his own; for, of two sorts of property, common and several, the notion of several property is most readily presented. Therefore, the proposition is similar to that which provides for the previous performance of a sacrifice, [preparatory to the sacrifice with the acid asclepias,] where an oblation, such as is presented at the full moon, intends particularly the offering of a cake of ground rice, as used at the Agníshoma [one of the ceremonies performed at that period,] and not the oblation of ghee as practised at the Upámsu-yága, for this is common to the Agníshoma and to sacrifices bearing other denominations.

15. Accordingly, there is no reference anywhere expressed on such a subject.

16. It is a remark of Bálaka that, as in the instance of green and of black kidney-beans [a] in relation to sacrifices, where it might be supposed, that black kidney-beans are not procurable, but the use of such beans is prohibited by an express passage of scripture which declares that black kidney-beans are unfit to be employed at sacrifices; so, notwithstanding the taking of that which is, and that which is not his own, [being common,] is permitted, still the taking of what exclusively is not his own is forbidden: this is puerile; for the definition of theft, as above explained, is not applicable [to the case of embezzlement of common property]. It cannot be affirmed, that black kidney-beans are unemployed in sacrifices; although ground particles of green beans, intermixed with black beans, be employed: for, in such case, mixed black beans appear to be used at the sacrifice.

17. Thus has partition of effects concealed by co-parceners from each other, been discussed.

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[a] *Vide* note (*a*), page 27. Vol. I.

CHAPTER XIV.

ON THE ASCERTAINMENT OF A CONTESTED PARTITION.

1. The determination of a doubt, regarding the fact of a partition having been made, is next explained. On that subject, Nárada says: "If a question arise among co-heirs in regard to the fact of partition, it must be ascertained by the evidence of kinsmen, by the record of the distribution, or by the separate transaction of affairs".[1]

2. The mention of "kinsmen" is intended to show that, if such be forthcoming, other persons should not be made witnesses. Accordingly, Yájñavalkya says: "When partition is denied, the fact of it may be ascertained by the evidence of kinsmen, relatives and witnesses, and by written proof; or by separate possession of house or field".[2]

3. In the first place, "kinsmen" or persons allied by community of funeral oblations, are witnesses. On failure of them, relatives, as signified by the term "bandhu". In default of these, strangers may be witnesses. For, if they were equally admissible, the specific mention of "kinsmen" and "relatives" would be unmeaning; since they are comprehended under the term "witnesses".

4. Hence also Sankha says: "Should a doubt arise on the subject of a partition of the wealth of kindred, the family may give evidence, if the matter be not known to the relations sprung from the same race".[3] "Relations sprung from the same race" are 'kinsmen'. If the matter be not known to them, "the family" or relatives may give evidence: but not a stranger [while a person of the family can bear testimony]. But, if these also be uninformed, any other person may be a witness.

5. Accordingly, kinsmen are stated by Nárada (§ 1) as the chief witnesses: and a different reading, jñátribhih, 'persons acquainted with the matter', [instead of jñátibhih, 'kinsmen',] is unfounded.

6. Next the proof is by written evidence: but written proof is [in general] superior to oral testimony: being so declared [by an express passage of law: "Testimony is better than presumption; and writing is better than oral evidence"].

7. In the next place, the proof is by the circumstance of separate transaction of affairs (§ 1) as it is stated by Nárada: "Gift and acceptance of gift, cattle, grain, house, land and attendants, must be considered as distinct among separated brothers, as also diet, religious duties, income and expenditure. Separated, not unseparated, brothers may reciprocally bear testimony, become sureties, bestow gifts and accept presents. Those, by whom such

[1] Nárada, XIII. 36. [2] Yájñavalkya, II. 150.

[3] II. Cole. Dig., 496, CCCLXXXVI.

matters are publicly transacted with their co-heirs, may be known to be separate even without written evidence".[1]

8. So Brihaspati: "A violent crime, immoveable property, a deposit, and a previous partition among co-heirs, may be ascertained by presumptive proof, if there be neither writing nor witnesses. The exertion of force, a blow, or the plunder, may be evidence of a violent crime; possession of the land may be proof of property; and separate wealth is an argument of partition. They, who have their income, expenditure and wealth distinct, and have mutual transactions of money-lending and traffic, are undoubtedly separate".[2]

9. One brother gives and another accepts, or they have separate house and land, or their income and expenditure [of wealth] and abode are separate; or, when a loan or other affair is transacted by one, another is made witness to it, or becomes surety; or they have mutual transactions of money-lending or the like; or one, having bought certain goods from another person, sells it for traffic to his brother; in these and similar instances, since any such act can only take place among divided brothers, presumption of partition is deduced from it by the intelligent.

10. It is not to be concluded from the use of the plural number in the phrase "by whom such matters are transacted" (§ 7), that the concurrence of all those circumstances is required. For these texts are founded on reason; and the reason is equally applicable in every several instance.

11. By saying "if there be neither writing nor witnesses," (§ 8), it is intimated, that presumptive proof is to be admitted only in default of written and oral evidence.

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[1] Nárada, XIII. 38-40.

[2] Brihaspati, XXV. 90, 91 and 92.

DÁYA-KRAMA-SANGRAHA.

AN ORIGINAL TREATISE
ON THE HINDU LAW OF INHERITANCE.

CHAPTER I.

ON THE ORDER OF SUCCESSION TO THE ESTATE OF A DECEASED MAN.

SECTION I.

Right of succession by the son, grandson and great-grandson.

1. The order of succession to be observed by heirs in regard to the property of a deceased man, is as follows:—

2. First, his legitimate son succeeds in conformity with this text: "After the death of the father and mother, the brothers being assembled, must divide equally the paternal estate: for they have not power over it, while their parents live",[1] and other texts of a like import which declare the right of the son to succeed on the death of the father.

3. In default of the son, the grandson takes the inheritance; and failing him, the great-grandson. But a grandson (D) whose father (B) is dead, and a great-grandson (F) whose father (E) and grandfather (C) are dead, participate equally in the inheritance with the son (A), for they without distinction confer equal benefits on the deceased owner of the property, by the presentation to him of funeral offerings at solemn obsequies.

4. But during the life-time of their parents, neither the grandson, nor the great-grandson, are entitled to the inheritance, since they do not confer any benefits on the deceased by the presentation of the funeral offering at solemn obsequies.

SECTION II.

Widow's right of succession.

1. In default of the grandson and great-grandson, the widow succeeds to the estate, in conformity with the text of Yájñavalkya: "The wife and the daughters, also both parents, brothers likewise

[1] Manu, IX. 104.

and their sons, gentiles, cognates, a pupil and a fellow-student: on failure of the first among these, the next in order is indeed heir to the estate of one who departed for heaven, leaving no male issue. This rule extends to all classes". [1]

2. Here, however, a particular rule is to be observed.

3. The wife is only to enjoy the estate of her deceased husband—she must not make a gift, mortgage, or sale of it.—So, Kátyáyana declares, "Let the childless widow preserving unsullied the bed of her lord, and abiding with her venerable protector, enjoy with moderation the property until her death. After her, let the heirs take it". [2]

4. "Abiding with her venerable protector", that is, having settled with her father-in-law, in her husband's family, let her, so long as she lives, enjoy her husband's estate, and not make at will a gift, mortgage, or sale of it.

5. On her death, those daughters, who would be entitled to the succession in default of the wife, take the estate; and not the kinsmen, who, by reason of their inferiority to the daughters and the rest of the heirs, cannot obstruct their claim. Thus it is written in the "Dána Dharma": "For woman, the heritage of their husbands is pronounced applicable to use.—Let not women on any account make waste of their husband's wealth". [3]—This use even should not be made by wearing delicate attire, or indulging in other luxuries: but since a widow benefits her husband by the preservation of her body, the use of property for the attainment of this object is permitted.—In like manner, she may make a gift or other disposal for the sake of completing the funeral rites of her husband. Accordingly, the expression "waste", is particularly made use of in the text above cited, and in other texts likewise. "Let not women make waste"; by "waste", is meant expense unproductive of benefit to the owner of the property.

6. But, if the widow be unable to subsist otherwise, she may mortgage the property; and, if even then unable, she may sell it.

7. She should give to the paternal uncles, and to the other relatives of her husband, presents in proportion to the wealth, for the sake of his funeral rites; Brihaspati has ordered it by the following text: "With presents offered to his manes, and by pious liberality, let her honour the paternal uncles of her husband; his spiritual pastor, and daughter's sons, the children of his sisters, and his maternal uncles; also aged and unprotected persons, and females of the family". [4] By the term "paternal uncle", is meant any relation of her husband included within the degree of relationship termed "Sapiṇḍa". The term "daughter's sons", relates to the progeny of her husband's daughter. By "sister's sons", the

[1] Yájñavalkya, II. 135 and 136.
[2] II. Cole. Dig., 595, CCCCLXXVII.
[3] II. Cole. Dig., 528, CCCCII.
[4] Brihaspati, XXV. 51.

descendants of her husband's sister's son are indicated. "Maternal uncles", that is, the maternal uncles of her husband. On these and on others should she bestow presents, and not on the members of the family of her own father, while these persons are living, for then the specification of "paternal uncles" and the rest would be meaningless. With their consent, however, she may make gifts to the kindred of her own father and mother, as declared by Nárada. "When the husband is deceased, his kin are the guardians of his childless widow. In the disposal of the property and care of herself, as well as in her maintenance, they have full power. But if her husband's family be extinct, or, contain no male, or be helpless, the kin of her own father are the guardians of the widow, if there be no relations of her husband within the degree of a sapinda." [1] "In the disposal of property", that is, by gift, &c., the wife is liable to the control of the family of her husband, after the death of her husband and on failure of sons;—so it is declared in the Dáya-Bhága. In the present age, a widow is exclusively of the same class with her late husband, since marriage with a woman of unequal class is prohibited during the Kali, or iron age.

SECTION III.

On the right of the daughter.

1. In default of the wife, the daughter next succeeds, in conformity with the following text of Devala, (and other texts likewise). "His own maiden daughter, born in holy wedlock, shall like a son take the inheritance of him who dies without male issue." [2] "His own", that is, of the same class; "Born in holy wedlock", legitimate.

2. The unmarried daughter is first entitled to the succession. Parásara declares, "A maiden daughter takes the heritage of one who dies leaving no male issue; or, if there be no such daughter, a married one shall inherit". [3]

3. The following special rule must be here observed, namely, that, if a maiden daughter in whom the succession had once vested, and who was subsequently married, should die without having borne issue, the married sister who has, and the sister who is likely to have male issue, inherit together the estate which had so vested in her. It does not become the property of her husband or others, for their right is exclusively to a woman's separate property (Stridhana).

4. But, if there be no maiden daughter, then the daughter who has, and the daughter who is likely to have male issue, are together entitled to the succession, and on failure of either one of them, the other takes the heritage in conformity with the text of Parásara above cited:—also the text which says: "Being of equal

[1] Nárada, XIII. 28 and 29.
[2] II. Cole. Dig., 543, CCCCXX.
[3] II. Cole. Dig., 542, CCCCXVIII.

class, and married to a man of a like class, and being virtuous and devoted to obedience, she [namely, the daughter] whether appointed or not appointed to continue the male line, shall take the property of her father who leaves no son, [nor wife];"[1] and because both descriptions of daughters [appointed, or not appointed] confer without distinction benefits on the deceased owner, by presenting to him through their sons funeral oblations at solemn obsequies.

5. The doctrine maintained by Díkshita, and respected by the author of the Dáya-bhága, namely, that in default of daughters having, and daughters likely to have male issue, daughters who are barren, or widows destitute of male issue, are incompetent to take the inheritance, because they cannot benefit the deceased owner by offering [through the medium of sons] the funeral oblations at solemn obsequies, should be understood.

SECTION IV.

On the right of the daughter's son.

1. In default of all daughters [who are entitled to succeed], the daughter's son takes the inheritance according to the text, "Let the daughter's son take the whole estate of his own father who leaves no [other] son; and let him offer two funeral oblations, one to his own father, the other to his maternal grandfather",[2] and other texts of a like import. "Of his own father", here means his mother's father. "Leaving no [other] sons," is here used indefinitely to signify a failure of heirs, including the daughter, otherwise it would contradict the text of Yájñavalkya, "The wife and daughters, &c." [Sec. ii. § i.]

2. The opinion maintained by Govinda Rája, namely, that on failure of a son, [grandson and great-grandson,] the daughter's son is entitled to the inheritance notwithstanding the existence of the daughter, is consequently refuted by the text above quoted.

3. The followers of the Mithila school assert, that the daughter's son is entitled to the heritage after the whole of the heirs enumerated in the text of Yájñavalkya just alluded to, and in other various texts. This is wrong; for since a series of heirs is recounted, ending with the king, whose death never occurs, it must necessarily result that the daughter's son could not obtain the inheritance at all, and the texts declaratory of his right would then be inoperative.

SECTION V.

On the father's right of succession.

1. If there be no daughter's son, the father is next entitled to the succession in conformity with the text of Kátyáyana, who

[1] Brihaspati, XXV. 57.

[2] Manu, IX. 132.

says: "In the case of divided parceners, on failure of a son, the father obtains the wealth",[1] and also, because he (the father) confers benefits on the deceased owner by the presentation of two funeral oblations in which the deceased owner participates. Váchaspati Misra, (and others) by adopting a different reading in this text of Vishṇu, "The wealth of him who leaves no male issue, goes to his wife: on failure of her, it devolves on daughters: if there be none, it belongs to the father: if he be dead, it appertains to the mother",[2] namely, "If there be none, it belongs to the mother, and if she be dead, it appertains to the father", have declared the mother's right of succession to precede that of the father.

2. This is not correct; for the reading established by the original text of Vishṇu, is the very reverse, namely, "If there be none, it belongs to the father; if he be dead, it appertains to the mother". It has also been thus quoted by all authors;—besides, the other reading is at variance with the text of Kátyáyana above cited; and further, since the superiority of the male is deduced from the following part of a text of Manu, "In a comparison between the male and the female sex, the male is pronounced the superior",[3] it is most conformable to the intention of the law that the father's right of succession should precede that of the mother.

SECTION VI.

On the mother's right of succession.

1. In default of the father, the succession devolves on the mother, in conformity with the text of Vishṇu above quoted: "If he be dead, it appertains to the mother", &c. [Sec. v. § i.]

2. Brihaspati also says, "Of a deceased son, who leaves neither wife nor male issue, the mother must be considered as heiress, or by her consent the brother may inherit":[4] for the mother confers benefits on the deceased owner by the birth of his brother, who offers three funeral oblations to the father, grandfather, and great-grandfather of the deceased owner in which he participates.

SECTION VII.

On the brother's right of succession.

1. On failure of the mother, the succession goes to the uterine or whole brother, who offers three funeral oblations to the father, grandfather, and great-grandfather of the deceased owner, in which he participates.

2. If there be no uterine or whole brother, the half brothers of the same class with the deceased are entitled to the succession, since they also offer three funeral oblations to the father and the

[1] II. Cole. Dig., 553, CCCCXXVII.
[2] Vishṇu, XXVII. 47.
[3] Manu, IX. 35.
[4] Brihaspati, XXV. 63.

other ancestors above named of the deceased owner in which he participates, and because the text of Yájñavalkya specifies, "Both parents, *brothers* likewise", [Sec. ii. § i.] the succession devolves on sons born of a different mother, for they are begotten by the same father.

3. Hence if there are two brothers, the one a uterine, and the other a half brother, and both were unassociated with the deceased owner, the uterine brother exclusively takes the wealth of his uterine brother in conformity with the text: "A uterine brother shall thus retain or deliver the share of his uterine relation".[1]

4. When an associated half brother, and an unassociated whole brother are the competitors for the succession, it devolves equally on both of them in conformity with the text: "A half brother being again associated may take the succession".[2]

5. Where uterine and half brothers compete, and both were associated with the deceased, the associated whole brother exclusively takes the inheritance, for in this case he possesses a double title [namely, his being uterine, and also associated,] in conformity with the text: "A reunited [brother] shall keep the share of his reunited [co-heir] who is deceased".[3]

6. The same order of succession must likewise be observed in the case of nephews of the whole and nephews of the half blood.

SECTION VIII.

On the nephew's right of succession.

1. In default of brothers, the brother's son of the whole blood is the successor, and not a nephew of the half blood who confers less benefits compared with the brother's son of the whole blood, since the mother and grandmother of the deceased owner do not participate in the oblations presented by the nephew of the half blood to the father and grandfather.

2. The participation of a mother, a grandmother, and great-grandmother, in the funeral oblations presented by the oblator to the father, grandfather, and great-grandfather respectively, is recounted in the following passage of the Vedas. "The mother participates in the funeral oblation made to the manes of her husband: so also do the grandmother, and great-grandmother."[4]

3. Among brother's sons associated and unassociated, all of the whole blood, the succession devolves on the associated brother's son.

4. In like manner, in the case of associated and unassociated

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[1] Yájñavalkya, II. 139.
[2] *Ibid*, II. 138.
[3] Yájñavalkya, II. 139.
[4] II. Cole. Dig., 561, CCCCXXXII.

brother's sons, all of the half blood, the succession devolves on the associated brother's son of the half blood.

5. But if the son of the whole brother were unassociated, and the son of the half brother associated, then they both inherit together.

6. Where, however, two nephews were either associated, or unassociated with the deceased, one of the whole, the other of the half blood, then in both instances the succession devolves on the nephew of the whole blood.

SECTION IX.

On the right of the brother's grandson.

1. If there be no brother's son, the brother's grandson is heir, both because he presents one funeral oblation, in which the deceased owner participates, and because he is within the degree of relationship, termed "Sapiṇḍa".

2. But brother's great-grandsons do not inherit, since they confer no benefits, because they stand in the fifth degree of relationship to the father of the deceased owner.

3. Here likewise the distinction of the whole blood, and of the half blood, as in the instance of brother's sons, must be observed.

SECTION X.

On the right of the father's daughter's son, and of other heirs.

1. On failure of the brother's grandson, the succession goes to the father's daughter's son, for he presents three funeral oblations, namely, to the father, paternal grandfather, and paternal great-grandfather of the deceased owner, *i.e.*, to his own maternal grandfather, maternal great-grandfather, and maternal great-great-grandfather. (According to Áchárya Chúḍámaṇi, the son of the proprietor's own sister, and the son of his half sister, have an equal right of inheritance.)

2. In default of the father's daughter's son, the brother's daughter's son succeeds, for he presents two funeral cakes in which the deceased owner participates, namely, to his father and paternal grandfather.

3. Failing him, the paternal grandfather is the successor, for as the father is entitled to succeed on a failure of the heirs of the deceased owner ending with the daughter's son, so by the rule of analogy the succession devolves on the grandfather in default of heirs down to the father's daughter's son; and because he presents one oblation in which the deceased owner participates.

4. In default of the paternal grandfather, the paternal grandmother is heir, according to the text of Manu, "Of a son dying childless, the mother shall take the estate and the mother being also dead, the paternal grandmother shall take the heritage".[1] As the mother succeeds on the death of the father, so by the rule of analogy the succession devolves on the paternal grandmother in default of the paternal grandfather.

5. Failing the paternal grandmother, the uncle succeeds, for he presents two oblations to the paternal grandfather, and great-grandfather of the deceased owner, in which the said owner participates.

6. In his default, the succession devolves on the uncle's son, for he presents two oblations in which the deceased owner participates, namely, to the owner's paternal grandfather and paternal great-grandfather.

7. Failing him, the uncle's grandson succeeds, for he presents one oblation, namely, to the paternal grandfather of the deceased owner, in which the said owner participates.

8. Failing the uncle's grandson, the succession devolves on the grandfather's daughter's son, because he presents two oblations in which the deceased owner participates, namely, to the owner's paternal grandfather, and paternal great-grandfather. Notwithstanding the grandfather's daughter's son, who presents two oblations in which the deceased owner participates, confers greater benefits than the uncle's grandson, who presents but one oblation in which the deceased owner participates, yet nevertheless the right of succession devolves in the first instance on the uncle's grandson by virtue of his relationship to the deceased owner as sapiṇḍa.

9. In default of the paternal grandfather's daughter's son, the uncle's daughter's son succeeds, because he presents two oblations in which the deceased owner participates, namely, to the owner's paternal grandfather and great-grandfather.

10. Then succeed in order the paternal great-grandfather and the paternal great-grandmother, because of the deceased owner participating in the oblations offered to the paternal great-grandfather, and also by reason of the rule of analogy above-mentioned.

11. Next succeed in order the paternal grandfather's brother, his son, and grandson, for they present one oblation in which the deceased owner participates, namely, to the owner's paternal great-grandfather.

12. Afterwards the paternal great-grandfather's daughter's son takes the succession, since he presents an oblation in which

[1] Manu, IX. 217.

the deceased owner participates, namely, to the owner's paternal great-grandfather.

13. Next the succession devolves on the paternal grandfather's brother's daughter's son, who presents an oblation in which the deceased owner participates, namely, to the owner's paternal great-grandfather.

14. In his default, the maternal grandfather of the deceased owner succeeds.

15. Failing him, the maternal uncle, his son and grandson, for these texts of Manu, "To three [ancestors] must water be given at their obsequies; for three is the funeral cake ordained",[1] and "To the nearest sapiṇḍa the inheritance next belongs",[2] which declare the right of succession to the wealth to take place according to the order of proximity of benefits conferred on the deceased owner, propound the right of the above-named to succeed; and the sole object of the introduction of the two texts above cited in a treatise on inheritance is to shew that the right of succession to the estate occurs according to the order of benefits conferred on the deceased proprietor: otherwise, the insertion of these texts in a treatise on inheritance would have been meaningless.

16. In default of the maternal uncle's grandson, the maternal grandfather's daughter's son succeeds.

17. Failing him, the maternal great-grandfather, his son, grandson, and great-grandson.

18. In their default, the maternal great-grandfather's daughter's son succeeds.

19. Failing him, the maternal great-great-grandfather, his son, grandson and great-grandson.

20. In default of these, the maternal great-great-grandfather's daughter's son succeeds.

21. On failure of the heirs who present oblations in which the deceased owner participates, the "sakulya", (or remote kinsman) takes the inheritance according to the text of Manu, "Then the distant kinsman shall be the heir, or the spiritual preceptor or the pupil, [or the fellow-student of the deceased]".[3]

22. The sakulya, or remote kindred, is of two descriptions, 1st descending, and 2nd ascending.

23. The first includes the great-grandson's son, and the rest down to the 3rd degree in the descending line. The second intends the great-grandfather's father, and other ancestors up to the 3rd degree in the ascending line.

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[1] Manu, IX. 186.

[2] Manu, IX. 187.

[3] Manu, IX. 187.

4. In default of the paternal grandfather, the paternal grandmother is heir, according to the text of Manu, "Of a son dying childless, the mother shall take the estate and the mother being also dead, the paternal grandmother shall take the heritage".[1] As the mother succeeds on the death of the father, so by the rule of analogy the succession devolves on the paternal grandmother in default of the paternal grandfather.

5. Failing the paternal grandmother, the uncle succeeds, for he presents two oblations to the paternal grandfather, and great-grandfather of the deceased owner, in which the said owner participates.

6. In his default, the succession devolves on the uncle's son, for he presents two oblations in which the deceased owner participates, namely, to the owner's paternal grandfather and paternal great-grandfather.

7. Failing him, the uncle's grandson succeeds, for he presents one oblation, namely, to the paternal grandfather of the deceased owner, in which the said owner participates.

8. Failing the uncle's grandson, the succession devolves on the grandfather's daughter's son, because he presents two oblations in which the deceased owner participates, namely, to the owner's paternal grandfather, and paternal great-grandfather. Notwithstanding the grandfather's daughter's son, who presents two oblations in which the deceased owner participates, confers greater benefits than the uncle's grandson, who presents but one oblation in which the deceased owner participates, yet nevertheless the right of succession devolves in the first instance on the uncle's grandson by virtue of his relationship to the deceased owner as sapiṇḍa.

9. In default of the paternal grandfather's daughter's son, the uncle's daughter's son succeeds, because he presents two oblations in which the deceased owner participates, namely, to the owner's paternal grandfather and great-grandfather.

10. Then succeed in order the paternal great-grandfather and the paternal great-grandmother, because of the deceased owner participating in the oblations offered to the paternal great-grandfather, and also by reason of the rule of analogy above-mentioned.

11. Next succeed in order the paternal grandfather's brother, his son, and grandson, for they present one oblation in which the deceased owner participates, namely, to the owner's paternal great-grandfather.

12. Afterwards the paternal great-grandfather's daughter's son takes the succession, since he presents an oblation in which

[1] Manu, IX. 217.

the deceased owner participates, namely, to the owner's paternal great-grandfather.

13. Next the succession devolves on the paternal grandfather's brother's daughter's son, who presents an oblation in which the deceased owner participates, namely, to the owner's paternal great-grandfather.

14. In his default, the maternal grandfather of the deceased owner succeeds.

15. Failing him, the maternal uncle, his son and grandson, for these texts of Manu, "To three [ancestors] must water be given at their obsequies; for three is the funeral cake ordained",[1] and "To the nearest sapiṇḍa the inheritance next belongs",[2] which declare the right of succession to the wealth to take place according to the order of proximity of benefits conferred on the deceased owner, propound the right of the above-named to succeed; and the sole object of the introduction of the two texts above cited in a treatise on inheritance is to shew that the right of succession to the estate occurs according to the order of benefits conferred on the deceased proprietor: otherwise, the insertion of these texts in a treatise on inheritance would have been meaningless.

16. In default of the maternal uncle's grandson, the maternal grandfather's daughter's son succeeds.

17. Failing him, the maternal great-grandfather, his son, grandson, and great-grandson.

18. In their default, the maternal great-grandfather's daughter's son succeeds.

19. Failing him, the maternal great-great-grandfather, his son, grandson and great-grandson.

20. In default of these, the maternal great-great-grandfather's daughter's son succeeds.

21. On failure of the heirs who present oblations in which the deceased owner participates, the "sakulya", (or remote kinsman) takes the inheritance according to the text of Manu, "Then the distant kinsman shall be the heir, or the spiritual preceptor or the pupil, [or the fellow-student of the deceased]".[3]

22. The sakulya, or remote kindred, is of two descriptions, 1st descending, and 2nd ascending.

23. The first includes the great-grandson's son, and the rest down to the 3rd degree in the descending line. The second intends the great-grandfather's father, and other ancestors up to the 3rd degree in the ascending line.

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[1] Manu, IX. 186.

[2] Manu, IX. 187.

[3] Manu, IX. 187.

24. Here the distant kinsmen in the descending line, first obtain the inheritance, according to their respective order, since the deceased owner partakes of the remainder of the oblations which they present.

25. In their default, the distant kindred, as far as the third degree in the ascending line, inherit in due order: since the deceased proprietor participates in the remainder of funeral oblations made to his great-great-grandfather, and the other ancestors, three in all: and their offspring present oblations to those three who are partakers of the remainder of oblations which it was incumbent on the deceased owner to make. The text of Brihaspati declares: "Where there are many relatives, (bándhaváh) or remote kindred (sakulyá) or cognate kindred, (jñatayah) whoever is nearest of kin, shall take the wealth of him who dies without male issue".[1] Propinquity of kin must be considered with reference to the greater or smaller benefits conferred on the deceased proprietor, as is declared by (both) the texts already cited above (§ 15).

26. If there be no distant kindred of this description, the samánodakas, or kinsmen allied by common libations of water, inherit, since they must be considered as comprehended in the term "sakulya".

27. On failure of these, the spiritual preceptor is the successor.

28. In default of him, the pupil is heir, for the text of Manu, "or the spiritual preceptor, or the pupil", propounds the order in which these persons shall respectively succeed. The spiritual preceptor here intended is he who affords religious instruction to his pupil after investing him with the Bráhminical thread, whence he is so denominated.

29. On failure of him, the fellow-student of the Vedas, as named in the text of Yájñavalkya, "a pupil and a fellow-student".[2]

30. In his default, persons of the same gotra, being inhabitants of the same village, succeed.

31. On failure of them, persons inhabiting the same village, and descended from the same patriarch, are the successors, according to the text of Gautama: "Persons allied by funeral oblations, gotra, and by patriarchal descent, shall take the heritage".[3]

32. On failure of all heirs, as here specified, Bráhmins, inhabitants of the same village, endowed with learning in the three Vedas, and other qualities, are the successors. Thus Manu says, "On failure of all those, the lawful heirs are such Bráhmins as have read the three Vedas, as are pure in body and mind and as have subdued their passions. Thus virtue is not lost".[4]

33. In default of them, the wealth goes to the king, excepting, however, the property of a Bráhmin. Thus Manu: "The wealth

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[1] Brihaspati, XXV. 62.
[2] Yájñavalkya, II. 135.
[3] Gautama, XXVIII. 21.
[4] Manu, IX. 188.

CHAPTER II.

On the order of succession to the peculiar property of a woman.

SECTION I.

Succession to the peculiar property of a maiden.

1. In regard to the property of a maiden, first the uterine brother is the successor; in his default, the mother, and failing her, the father. Nárada says: "The wealth of a deceased damsel let the uterine brothers themselves take; on failure of them, it shall belong to the mother; or if she be dead, to the father". [1]

2. This relates to wealth other than that which has been given to the damsel by a bridegroom, for a bridegroom has a right to wealth given by himself. The text of Paithínisi recites: "The bridegroom shall take the gratuity given by himself", and Nárada says: "Let the first bridegroom on his return take back the presents he gave to the damsel, who has since been married: and in case of her death likewise, let him receive back what he gave, after defraying the expenses which they have mutually incurred". [2]

SECTION II.

Definition of the peculiar property of a married woman.

1. The peculiar property of a woman is in the first place defined, for the purpose of afterwards describing the order of succession to such property when belonging to a married woman. On this subject Nárada says: "What was given before the nuptial fire, what was presented in the bridal procession, her husband's donation, and what has been given by her brother, or by either of her parents, is termed the six-fold property of a woman". [3]

2. Here the number "six" must not be considered as restrictively used; since it will be hereafter declared that woman's peculiar property is of many descriptions. Kátyáyana describes a gift before the nuptial fire: "What is given to women at the time of their marriage, near the nuptial fire, is declared by the wise as the women's peculiar property bestowed before the nuptial fire." [4]

3. "The time of their marriage", that is, the time occupied by the ceremony, commencing with the performance of funeral obsequies for departed ancestors, and concluding with the prostration of the husband at the feet of his wife.

4. Property received by the woman during this time is denominated "Yautaka", or property given at a marriage, conformably to the meaning of the root, "yu", which signifies to mix, and

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[1] Found in Gautama, XXVIII. 25 and 26.
[2] Not found.
[3] Nárada, XIII. 8.
[4] II. Cole. Dig., 585, CCCCLXIV.

4. In default of the paternal grandfather, the paternal grandmother is heir, according to the text of Manu, "Of a son dying childless, the mother shall take the estate and the mother being also dead, the paternal grandmother shall take the heritage".[1] As the mother succeeds on the death of the father, so by the rule of analogy the succession devolves on the paternal grandmother in default of the paternal grandfather.

5. Failing the paternal grandmother, the uncle succeeds, for he presents two oblations to the paternal grandfather, and great-grandfather of the deceased owner, in which the said owner participates.

6. In his default, the succession devolves on the uncle's son, for he presents two oblations in which the deceased owner participates, namely, to the owner's paternal grandfather and paternal great-grandfather.

7. Failing him, the uncle's grandson succeeds, for he presents one oblation, namely, to the paternal grandfather of the deceased owner, in which the said owner participates.

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9. In default of the paternal grandfather's daughter's son, the uncle's daughter's son succeeds, because he presents two oblations in which the deceased owner participates, namely, to the owner's paternal grandfather and great-grandfather.

10. Then succeed in order the paternal great-grandfather and the paternal great-grandmother, because of the deceased owner participating in the oblations offered to the paternal great-grandfather, and also by reason of the rule of analogy above-mentioned.

11. Next succeed in order the paternal grandfather's brother, his son, and grandson, for they present one oblation in which the deceased owner participates, namely, to the owner's paternal great-grandfather.

12. Afterwards the paternal great-grandfather's daughter's son takes the succession, since he presents an oblation in which

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14. In his default, the maternal grandfather of the deceased owner succeeds.

15. Failing him, the maternal uncle, his son and grandson, for these texts of Manu, "To three [ancestors] must water be given at their obsequies; for three is the funeral cake ordained",[1] and "To the nearest sapiṇḍa the inheritance next belongs",[2] which declare the right of succession to the wealth to take place according to the order of proximity of benefits conferred on the deceased owner, propound the right of the above-named to succeed; and the sole object of the introduction of the two texts above cited in a treatise on inheritance is to shew that the right of succession to the estate occurs according to the order of benefits conferred on the deceased proprietor: otherwise, the insertion of these texts in a treatise on inheritance would have been meaningless.

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21. On failure of the heirs who present oblations in which the deceased owner participates, the "sakulya", (or remote kinsman) takes the inheritance according to the text of Manu, "Then the distant kinsman shall be the heir, or the spiritual preceptor or the pupil, [or the fellow-student of the deceased]".[3]

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24. Here the distant kinsmen in the descending line, first obtain the inheritance, according to their respective order, since the deceased owner partakes of the remainder of the oblations which they present.

25. In their default, the distant kindred, as far as the third degree in the ascending line, inherit in due order: since the deceased proprietor participates in the remainder of funeral oblations made to his great-great-grandfather, and the other ancestors, three in all: and their offspring present oblations to those three who are partakers of the remainder of oblations which it was incumbent on the deceased owner to make. The text of Brihaspati declares: "Where there are many relatives, (bándhaváh) or remote kindred (sakulyá) or cognate kindred, (jñatayah) whoever is nearest of kin, shall take the wealth of him who dies without male issue".[1] Propinquity of kin must be considered with reference to the greater or smaller benefits conferred on the deceased proprietor, as is declared by (both) the texts already cited above (§ 15).

26. If there be no distant kindred of this description, the samánodakas, or kinsmen allied by common libations of water, inherit, since they must be considered as comprehended in the term "sakulya".

27. On failure of these, the spiritual preceptor is the successor.

28. In default of him, the pupil is heir, for the text of Manu, "or the spiritual preceptor, or the pupil", propounds the order in which these persons shall respectively succeed. The spiritual preceptor here intended is he who affords religious instruction to his pupil after investing him with the Bráhminical thread, whence he is so denominated.

29. On failure of him, the fellow-student of the Vedas, as named in the text of Yájñavalkya, "a pupil and a fellow-student".[2]

30. In his default, persons of the same gotra, being inhabitants of the same village, succeed.

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32. On failure of all heirs, as here specified, Bráhmins, inhabitants of the same village, endowed with learning in the three Vedas, and other qualities, are the successors. Thus Manu says, "On failure of all those, the lawful heirs are such Bráhmins as have read the three Vedas, as are pure in body and mind and as have subdued their passions. Thus virtue is not lost".[4]

33. In default of them, the wealth goes to the king, excepting, however, the property of a Bráhmin. Thus Manu: "The wealth

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[2] Yájñavalkya, II. 135.
[3] Gautama, XXVIII. 21.
[4] Manu, IX. 188.

CHAPTER II.

ON THE ORDER OF SUCCESSION TO THE PECULIAR PROPERTY OF A WOMAN.

SECTION I.

Succession to the peculiar property of a maiden.

1. In regard to the property of a maiden, first the uterine brother is the successor; in his default, the mother, and failing her, the father. Nárada says: "The wealth of a deceased damsel let the uterine brothers themselves take; on failure of them, it shall belong to the mother; or if she be dead, to the father". [1]

2. This relates to wealth other than that which has been given to the damsel by a bridegroom, for a bridegroom has a right to wealth given by himself. The text of Paithínisi recites: "The bridegroom shall take the gratuity given by himself", and Nárada says: "Let the first bridegroom on his return take back the presents he gave to the damsel, who has since been married: and in case of her death likewise, let him receive back what he gave, after defraying the expenses which they have mutually incurred". [2]

SECTION II.

Definition of the peculiar property of a married woman.

1. The peculiar property of a woman is in the first place defined, for the purpose of afterwards describing the order of succession to such property when belonging to a married woman. On this subject Nárada says: "What was given before the nuptial fire, what was presented in the bridal procession, her husband's donation, and what has been given by her brother, or by either of her parents, is termed the six-fold property of a woman". [3]

2. Here the number "six" must not be considered as restrictively used; since it will be hereafter declared that woman's peculiar property is of many descriptions. Kátyáyana describes a gift before the nuptial fire: "What is given to women at the time of their marriage, near the nuptial fire, is declared by the wise as the women's peculiar property bestowed before the nuptial fire." [4]

3. "The time of their marriage", that is, the time occupied by the ceremony, commencing with the performance of funeral obsequies for departed ancestors, and concluding with the prostration of the husband at the feet of his wife.

4. Property received by the woman during this time is denominated "Yautaka", or property given at a marriage, conformably to the meaning of the root, "yu", which signifies to mix, and

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[1] Found in Gautama, XXVIII. 25 and 26.
[2] Not found.
[3] Nárada, XIII. 8.
[4] II. Cole. Dig., 585, CCCCLXIV.

the connection here alluded to is that which results from the union by marriage of the man and woman, who become as it were one and the same body. The following passage of the Vedas declares: "Her bones become identified with his bones, flesh with flesh, skin with skin".

5. Vyása also says, "Whatever is presented to the bridegroom, at the time of the nuptials, intending [the benefit of the bride,] belongs entirely to the bride; and shall not be shared by the kinsmen". [1]

6. "Intending"; that which is given to the bridegroom, delivered into his hand, accompanied by an expression of the intention, such as "Let this belong to the bride", and not any thing given without this intention; such is the meaning.

7. Therefore the expression, "before the nuptial fire", occurring in the text before cited, and that of "the time of their marriage", in the text since quoted, are both illustrative. Since whatever is delivered into the hand of the bridegroom in view to the benefit of the bride becomes hers, such intention must therefore be considered as the foundation of her property therein. The mention, therefore, of the bridegroom must be taken in a secondary sense, for wealth delivered into the hand of any other with that intention, would equally become the exclusive property of the bride.

8. Kátyáyana describes a gift presented in the bridal procession. "That again which a woman receives while she is conducted from the parental abode, [to her husband's dwelling] is declared to be the separate property of a woman under the name of gift presented at the bridal procession." [2]

9. The term "parental", being derived from a compound expression, of which only one part is retained, the presents which she receives from the family of either her father, or mother, while proceeding to the house of her husband, are gifts presented at the bridal procession.

10. "Her husband's donation", is wealth given to her by her husband, as indeed appears from the use of the expression in another text of Kátyáyana. "Let the woman enjoy her husband's donation as she pleases, when he is deceased; but while he lives, she should carefully preserve it, or else commit it to the family." [3]

11. It must not be argued that the word "dáya" (donation) here used, relates to the wealth of her husband; for the latter part of the text above cited, "but while he lives, she should carefully preserve it", would then be meaningless, and it is moreover impossible that during the life-time of the husband, his wealth should go to his wife.

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[1] I. Cole. Dig., 436, XXIX. [2] I. Cole. Dig., 585, CCCCLXV.
[3] II. Cole. Dig., 595, CCCCLXXVII.

12. Nor does the term "husband's donation" apply to the heritage devolving on the wife on the death of her husband; for the mention of it occurs in a chapter treating of the peculiar property of a woman, and heritable wealth does not form her peculiar property;—supposing such to be the case, the sense of the verb "dá", to give, would then become metaphorical.

13. "Commit it", deposit it; "The family"; her husband's family, his younger brother and the rest.

14. "Or else", that is, if unable to preserve it herself. Thus Yájñavalkya: "What has been given to a woman before or after her nuptials by the father, the mother, the husband, or a brother, or received by her at the nuptial fire, or presented to her on her husband's marriage to another wife, as also any other separate acquisition, is denominated woman's property".[1]

15. Wealth given by a man for the sake of gratifying his first wife when desirous of espousing a second, is called a gift on a second marriage, since the intention of it is to obtain another wife.

16. So Devala says: "Her maintenance, her ornaments, her perquisite, and her gains, are the separate property of a woman. She herself exclusively enjoys it; and her husband has no right to use it unless in distress".[2] "Subsistence", food and raiment.

17. Kátyáyana describes the fee or perquisite: "Whatever has been received as the wages for labour on houses, furniture, beasts of burden, milk, animals and ornaments, is denominated a fee".[3] That is termed a fee, which a woman receives from others as a *douceur* for influencing her husband, an architect or other description of artist, to expedite the completion of their business, such as the construction of a house, or other kind of work. It is the price in fact which she receives for sending her husband [to the employment].

18. "Furniture", brooms, &c. "Beasts of burden", bulls, &c. "Milch animals", milch cows, &c. "Gains", a treasure discovered, &c.

19. Thus Vishṇu says: "What has been given to a woman by her father, her mother, her son, or her brother, what has been received by her before the nuptial fire, what has been presented to her on her husband's espousal of another wife, what has been given to her by kindred, as well as her perquisite, and a gift subsequent are a woman's separate property".[4] By "kindred", maternal uncles are indicated.

20. Devala describes a gift subsequent, "What has been received by a woman from the family of her husband at a time posterior to her marriage, is called a gift subsequent, and so is that

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[1] Yájñavalkya, II. 143.
[2] II. Cole. Dig., 597, CCCCLXXVIII.
[3] II. Cole. Dig., 558, CCCCLXXVIII.
[4] Vishṇu, XVII. 18.

which is similarly received from the family of her kindred. Whatever is received by a woman after her nuptials from her husband, or from her parents, through the affection of the giver, Bhṛigu pronounces to be a gift subsequent".[1]

21. "From the family of her kindred"; here by the word "kindred", her father and mother are [also] intended.

22. Therefore, any thing received after the marriage from persons related through her husband, such as her father-in-law and others, or from persons related through the father and mother, namely, maternal and paternal grandfathers, is termed a gift subsequent. Such is the meaning of the first text, and the meaning of the second text is that any thing received posterior to the marriage, either from her husband, or from her parents, is also termed a "gift subsequent".

23. Since various sages have recounted woman's peculiar property as including various items, the number six specified in the text of Nárada, (§ 1) is not to be respected, and the different texts must, therefore, be considered as generally descriptive of woman's peculiar property.

24. A woman's property may then be briefly defined to be that wealth which, independent of her husband's control, she has a right to dispose of at pleasure, recognized as this right is by the law which Kátyáyana has declared.

25. "The wealth which is earned by mechanical arts, or which is received through affection from any other [but the kindred] is always subject to the husband's dominion. The rest is pronounced to be the woman's property."[2]

26. "That which is received by a married woman, or a maiden in the house of her husband or of her father, from her parents, is termed the 'gift of affectionate kindred'. The independence of women who have received such gifts is recognized in regard to that property, for it was given by their kindred to soothe them, and for their maintenance. The power of women over the gifts of their affectionate kindred is *doubtlessly* declared, both in respect of donation and of sale according to their pleasure, even in the case of immoveables."[3]

27. He explains the meaning of the word "rest", (§ 25) by the text which follows (§ 26). "That which is received by a married woman," &c.

28. "From any other." The husband has authority over that which the woman has obtained from any other excepting the family of her father, mother, or husband, or in that which she has gained by the exercise of an art, such as painting, or spinning. He is entitled to take it even in the absence of any distress.

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[1] Quoted as Kátyáyana's, II. Cole. Dig., 587, CCCCLXVIII.
[2] II. Cole. Dig., 589, CCCCXLXX. [3] II. Cole. Dig., 594, CCCCLXXV.

29. Therefore, notwithstanding that woman has ownership in both descriptions of property, she has not independent power in regard to it; on the contrary, it appearing from the text that her husband has authority over such property, his permission authorizing the disposal of it, must be sought by the woman.

30. "Pronounced to be the woman's property", that is, declared alienable by the woman at her own pleasure. "By a married woman", &c., that which is received by a married woman from the family of her husband, or from the family of her parents, and by a damsel from the family of her parents, is the "gift of affectionate kindred"; such is the meaning. "To soothe them", that is, through a motive of tenderness.

31. "Even in the case of immoveables", relates to immoveable property other than that which has been bestowed upon her by her husband, for a prohibition exists against the gift or sale by a woman in regard to immoveable property given to her by her husband; so Nárada: "What has been given by an affectionate husband to his wife, she may consume as she pleases when he is dead, or may give it away, excepting immoveable property".[1]

32. Since "given by her husband", is here particularly specified, the general text of Kátyáyana above quoted, must be considered applicable to immoveable property, other than that bestowed by the husband, in conformity with the principle which admits of a special provision limiting the operation of a general rule.

33. But the husband is at liberty during a period of famine and the like, when unable to subsist without the use of the woman's separate property, to take such property even though it be the gift of affectionate kindred. Thus Yájñavalkya: "A husband is not liable to make good the property of his wife taken by him during a famine, or for the performance of a duty, or during illness, or while under restraint".[2]

34. "While under restraint", while a creditor or other person has him arrested for the purpose of recovering his due, being debarred at the same time from ablution, from food, &c. Kátyáyana has declared the husband to have no right to the use of the woman's separate property [as before described] during the non-existence of any such calamity as a famine or the like.

35. "Neither the husband, nor the son, nor the father, nor the brothers, can assume the power over a woman's property to take it or to bestow it. If any one of these persons by force consume the woman's property, he shall be compelled to make it good with interest, and shall also incur a fine. If such person having obtained her consent, use the property amicably, he shall be required to pay merely the principal when he becomes rich. But if the husband have a second wife, and do not shew honor to his first

[1] Nárada, I. 29.

[2] Yájñavalkya, II. 147.

wife, he shall be compelled by force to restore her property, though amicably lent to him. If food, raiment and dwelling be withheld from the woman, she may exact her due, and take a share [of the estate] with the co-heirs." [1]

36. "Make it good with interest", that is, the woman's separate property taken by force in the form of a loan must be rendered with interest. The word "with interest", [savriddhim] must not be supposed a discriminative of (stridhana) "the woman's separate property", for, supposing this to be the case, "savriddhi" would be the proper form in which the word would appear.

37. "Merely the principal"; here the insertion of the word "merely" is intended to preclude [the payment of] interest.

38. "But if", &c., the meaning of which is, that if the husband after making use of the separate property of one wife, reside with another wife, and neglect the former, he shall be compelled by the ruling power to restore such property, even though it had been amicably lent.

39. "Food and raiment"; should the husband not allow his wife the necessaries of life, food and clothing, then she may, if chaste, require the supply of food and raiment, which is her due.

40. "Dwelling", place of residence.

41. "A share", that is, on the death of her husband, she is to receive from his co-heirs, his younger brother, and the rest, the share to which he was entitled. Let this suffice. Further detail being superfluous, the subject in question is consequently proceeded with.

SECTION III.

On the succession to the separate property of a woman received by her at her nuptials.

1. The separate property of a woman having been thus defined, the right of succession to such property on the death of the woman is next described.

2. In respect to property received at her marriage, "Yautaka", her maiden daughter succeeds first; a text of Manu declares: "The wealth obtained by the mother at her marriage, let her maiden daughter exclusively take". [2]

3. In default of such daughter, it appertains to the damsel affianced, and failing her, the married daughters who have, and those who are likely to have, male issue, inherit together.

4. A text of Gautama states that a woman's property goes to her "daughters unaffianced and to those not actually married". [3]

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[1] II. Cole. Dig., 594, CCCCLXXV, and 599, CCCCLXXXI. (2).
[2] Manu, IX. 131. [3] Gautama, XXVIII. 2.

5. Here, as by the word "daughters", the right of succession by all the daughters is generally declared, the mention of "unaffianced", &c., becomes significant, as denoting the order in which they shall respectively inherit, and therefore first the maiden succeeds; then the affianced daughter, that is, one whose troth is plighted; in her default, the married daughter described as above, and failing her, the succession devolves equally on the barren and the widowed daughters. This is the meaning of the text.

6. Here, however, on the death of a maiden daughter, or of one affianced, in whom the succession had vested, and who having been subsequently married, is ascertained to have been barren, or on the death of a widow who has not given birth to a son, the succession to the property which had passed from the mother to her daughters, would devolve next on the sisters having, and likely to have, male issue, and in their default, on the barren and widowed daughters;—not on the husband of such daughter abovementioned in whom the succession had vested: for the right of the husband is relative to the "woman's separate property", and wealth which has in this way passed from one to another, can no longer be considered as the "woman's separate property";—it must be thus understood.

7. The right of the barren, and widowed daughters to succeed, notwithstanding they confer no direct benefits through the medium of sons, is gathered from the text of Gautama above quoted, which declares the right of succession by the daughters generally, whether married or unmarried.

8. In default of all daughters, the son has right to succeed: for the text of Yájñavalkya declares the right of the son to succeed on failure of daughters by the terms "male issue", expressed in this text, "Daughters share the residue of their mother's property after payment of her debts;—the male issue succeeds in their default",[1] and because the son, compared with all the rest, confers the greatest benefits. The text of Baudháyana also declares: "Male issue of the body being left, the property must go to them".[2]

9. In default of the son, the daughter's son inherits, for it is reasonable, that since the daughter's claim is preferred to that of the son, the son of the debarred son should be excluded by the son of the person who bars his claim.

10. Failing the daughter's son, the son's son succeeds, and in his default, the great-grandson in the male line, according to the degree in which benefits are conferred by them.

11. In default of the great-grandson in the male line, the son of a rival wife succeeds, for the text of Brihaspati recites that, "The mother's sister, the maternal uncle's wife, the paternal

[1] Yájñavalkya, II. 117. [2] Baudháyana, I. 5, 11, 11. See note in the S. B. E. Series.

uncle's wife, the father's sister, the mother-in-law, and the wife of an elder brother are declared similar to mothers. If they leave no issue of their bodies, nor son [of a rival wife] nor daughter's son, nor son of those persons, the sister's son and the rest shall take their property".[1]

12. The term "son", which occurs as above, "nor son", is intended to propound the right of succession by the son of a rival wife; otherwise, it is useless to consider it as a discriminative of "aurasa", meaning of itself "legitimate issue"; and it would also follow that the younger brother of the woman's husband and the rest would have a right to succeed notwithstanding the existence of the son of a rival wife.

13. In default of the son of the rival wife, her grandson succeeds; and failing him, her great-grandson, since they both present oblations to her husband in which she also participates.

14. In default of all the above heirs, if the property were obtained by the woman at the time of nuptials, celebrated according to one of the forms denominated Bráhma, Daiva, Ársha, Gándharva, or Prájápatya, her husband is the next successor, for the text of Manu declares, "It is ordained that the property of a woman married by the ceremonies called Bráhma, Daiva, Ársha, Gándharva, or Prájápatya, shall go to her husband, if she die without issue".[2]

15. On failure of her husband, her brother is the next successor according to the text of Yájñavalkya, "That which has been given to her by her kindred, as well as her fee or gratuity, and any thing bestowed after marriage, her kinsmen take, if she die without issue".[3]

16. The term "kindred", means her mother and father, and, consequently, by the term "kinsmen", her brothers are signified. The same is declared by Kátyáyana, who says, "Immoveable property, which has been given by parents to their daughter, goes always to her brother, if she die without issue".[4] Here since the term "immoveable property", is used, other property is of course intended by the argument drawn from the loaf and staff.[a] Thus it is stated in the Dáya-Bhága. By the use of the term "always", it appears, that the eight forms of marriage, namely, Bráhma and the rest, are included.

17. "Fee or gratuity" has been before explained, as also the "gift subsequent". Failing the brother, the succession devolves on the mother, and in her default, the father inherits. A text of Kátyáyana says: "The fee of a damsel goes to her uterine brothers;

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[1] Brihaspati, XXV. 88 and 89.
[2] Manu, IX. 196.
[3] Yájñavalkya, II. 144.
[4] II. Cole. Dig., 618, DIX.

[a] See note at p. 19 of this volume.

failing them, the mother succeeds; and after her, the father. Some hold that the father succeeds first".[1]

18. The "fee of a damsel", that is, her wealth, belongs first to her uterine brothers; in their default, it goes to the mother; and after her to her father. "Some hold", &c., meaning in the opinion of others; but according to our interpretation, the father first inherits, and afterwards the mother. Such is the meaning.

19. But if the wealth were received by the woman at the time of her marriage, celebrated according to any one of the three forms denominated Paisácha, Rákshasa, or Asura, then in default of the great-grandson of the rival wife, the succession devolves first on the mother, then on the father. For the text of Manu declares: "But her wealth given on the marriage called Asura, or on either of the two others, is ordained, on her death without issue, to become the property of her mother and father".[2]

20. Here the use of the compound in this form ["Mátápitroh"] is with the view of exhibiting the order of succession, for if it had been intended that the mother and father should inherit together, the form "Pitroh" would have been used.

21. In default of the father, the brother succeeds, and failing the brother, the succession devolves on the husband according to the text of Kátyáyana, "That which has been given to her by her kindred, on failure of kinsmen, goes to her husband".[3]

22. "Kindred", mother and father. On failure of "kinsmen", by which the failure of the brother must be understood; because [in the instance of wealth received by the woman at the time of nuptials, celebrated in one of the five forms called Bráhma, &c.,] the parents succeed only in the case of a failure of the brothers.

SECTION IV.

On the order of succession to the separate property of a woman, when not received by her at her nuptials.

1. The order of succession requisite to be observed in regard to woman's peculiar property, generally, whether "Yautaka" or "Ayautaka" on a failure of heirs including all as yet enumerated, will be hereafter declared. But first we treat of the order of succession in regard to wealth not received by the woman at the time of nuptials termed "Ayautaka".

2. In the case of the peculiar property of a woman [not obtained by her at the time of nuptials, and] not given to her by her father at the time of the wedding, or at any other time, the son and the unmarried daughter inherit together.

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[1] Gautama, XXVIII. 25 and 26. [2] Manu, IX. 197.
[3] II. Cole. Dig., 620, DII.

3. This is declared by the first half of the following passage of Devala, "A woman's property is common to her sons and unmarried daughters when she is dead; but if she leave no male issue, her husband shall take it, her mother, her brother or her father".[1]

4. Since the words "sons and unmarried daughters" are exhibited in the conjunctive compound called "Dvandva", and because the words "common to" are here expressed, it results that the son and the unmarried daughter possess the right of inheritance together, and in default of either of them, the wealth goes to the other.

5. On failure of both these two, the succession devolves equally on the married daughter, who has, and the married daughter, who is likely to have, male issue—for a text of Nárada recites, "In default of a son, let a daughter take the succession, for they are both offspring alike":[2]—and because oblations at solemn obsequies are presented by the daughter through the medium of her son, to the husband of a woman, in which she participates.

6. In default of either of these two, the other succeeds, and on failure of both of them the son's son inherits, for he presents an oblation at solemn obsequies to the husband of the woman, of which she partakes.

7. In default of the son's son, the daughter's son succeeds; for it is reasonable since the claim of the married daughter is barred by the son, that the son of the debarred daughter should be debarred by the son of the person who obstructs her claim: and a text of Manu reciting that, "A daughter's son delivers him in the next world like the son's son",[3] declares the right of the daughter's son to succeed.

8. "Like the son's son"; from this expression it results, that when there is no longer an adverse claim, the daughter's son has a right to succeed after the son's son.

9. In his default the great-grandson in the male line succeeds. Failing him, the son of a rival wife, her grandson and great-grandson in the male line: since all these present funeral oblations to the husband of the woman, in which she participates.

10. After these, the barren and widowed daughters both inherit together, for they too rank among the progeny of the woman, and the right of the husband to succeed is only in the case of a failure of progeny generally: Manu declares that the wealth of a childless woman, married according to the form denominated Bráhma or the remaining four forms, goes to her husband.

11. Failing either of these, the other succeeds, and in default of successors, including the barren and widowed daughters, the succession devolves in due order, by the rule of analogy, as in the case

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[1] II. Cole. Dig., 603, CCCCLXXXIX. [2] Nárada, XIII. 50.
[3] Manu, IX. 139.

of wealth received at nuptials, viz., on the woman's husband, brother, mother and father, if she were married according to any one of the five forms, denominated Bráhma, and the rest; or if she were married according to any of the three forms, styled Asura, &c., on her mother, father, brother and husband.

12. The order to be observed on a failure of all these successors, will be hereafter declared.

SECTION V.

On the succession to the separate property of a woman, when given to her by her father.

1. In regard to the wealth given by a father to a woman at the time of the wedding, or antecedent or subsequent to it, a maiden daughter inherits in the first place.

2. After her, a married daughter who has, and one who is likely to have, male issue, inherit together.

3. Next, the succession devolves on the barren and widowed daughters, and in default of all daughters, the son and the rest succeed, as in the case of property received at nuptials; for a text of Manu declares, "The wealth of a woman which has been in any manner given to her by her father, let the Bráhmiṇi damsel take, or let it belong to her offspring".[1]

4. Here by the specification of "given by the father", it is intended, that whatever has been given by the father even at any other time than that of the wedding, belongs first to the damsel, and after her, it goes to her offspring,—her son.

5. The expression "Bráhmiṇí damsel", is merely an *illustrative* recitation ("Anuváda"). Thus it is stated in the Dáya-Bhága.

SECTION VI.

On the succession to the separate property of a woman, generally, on a failure of all the heirs as yet enumerated.

1. In default of successors down to the father, in respect to wealth received at nuptials solemnized according to any one of the five forms of marriage, denominated Bráhma and the rest, and on failure of successors down to the husband, in respect to wealth received at nuptials, celebrated according to any one of the three forms styled Asura, &c., as well as in the case of all other peculiar property of a woman, the succession devolves on the husband's younger brother: for the right of the husband's younger brother and the rest to succeed at that time, has been laid down by Brihaspati in the following text: "The mother's sister, the maternal

[1] Manu, IX. 198.

uncle's wife, the paternal uncle's wife, the father's sister, the mother-in-law, and the elder brother's wife are pronounced similar to mothers. If they leave no issue of their bodies, nor son [of a rival wife], nor daughter's son, nor son of those persons, the sister's son and the rest shall take the property".[1]

2. The word ("*aurasa*") "issue", in this text implies both son and daughter. "Nor son" must be considered as intending the son of a rival wife. It must not be supposed restrictive of the word "issue", since it would be unmeaning, and it would follow that the succession devolved on the husband's younger brother and the rest, even while the son of a rival wife were existent. "Nor sons of those persons", here by "those persons", the son, and the son of the rival wife are intended:—the expression does not refer to the damsel and daughter's son, for the damsel's son is included in the term "daughter's son", and the daughter's son's son confers no benefits, being incompetent to present the funeral offering. By the term ["*va*"] "nor", the sons of the son, and of the son of the rival wife are to be understood. But the *order* of succession prescribed by the above text is not to be followed; for if this were the case, it would follow, that the husband's younger brother succeeded last, and this would be improper, since he confers greater benefits than all the others who are specified in that text: and the following texts of Manu, "To three ancestors must water be given at their obsequies; for three, (the father, his father and the paternal grandfather) is the funeral cake ordained":[2] "To the nearest sapiṇḍa the inheritance next belongs",[3] are recited in a treatise on inheritance, for the purpose of exhibiting that the order of succession takes place according to the greater or less benefits conferred: otherwise, the introduction of them in such a treatise would be useless; consequently, the order of succession must be understood as taking place according to the proximity of benefits conferred, and this being the case, the order inferrible from the spirit of the text, rather than that derived from the letter of it, must be respected.

3. Therefore, the husband's younger brother is first entitled to the succession, because he presents oblations to the woman, to her husband, and to three persons to whom her husband was bound to offer oblations, and he is moreover a sapiṇḍa.

4. In his default, the succession devolves at once upon the sons of the husband's younger and elder brothers, because they present oblations to the woman, to her husband, and to two persons to whom her husband was bound to offer oblations, (namely, to his father and grandfather,) and they are moreover within the degree of relationship, termed sapiṇḍa.

5. In their default, the sister's son, though not a sapiṇḍa, is entitled to the succession: for he presents oblations to the woman

[1] Brihaspati, XXV. 88 and 89. [2] Manu, IX. 187.
[3] Manu, IX. 186.

and to three persons, namely, her father and the rest to whom her son was bound to offer oblations.

6. Failing him, the husband's sister's son: for he presents oblations to her, to her husband, and to three persons to whom her husband ought to have offered oblations.

7. In his default, the [woman's] brother's son, who presents oblations to the woman, and to her father and grandfather.

8. Failing him, the son-in-law, who presents oblations to his father-in-law and mother-in-law.

9. Brihaspati's text above quoted propounds, therefore, merely the right of succession by the persons above-mentioned, and is by no means intended to exhibit the order in which they succeed.

10. Failing all these heirs, including the son-in-law, the father-in-law, and the husband's elder brother, who are sapiṇḍas, succeed according to their nearness of kin.

11. In default of all sapiṇḍas, the "sakulyas", those allied by common libations of water, and those descended from the same patriarch in the male line, succeed.

12. Failing all these, in the case of the property of a Bráhmiṇí woman, Bráhmins, inhabitants of the same village, exceedingly learned in the Vedas, are entitled to the succession.

13. But in the case of the property of a woman of the Kshatriya and other castes, the king is exclusively entitled to the inheritance.

CHAPTER III.

On exclusion from inheritance.

1. Those who are excluded from inheritance are now specified, from which exception, those who are competent to inherit, will appear: Thus Manu: "Impotent persons and outcasts, persons born blind and deaf, madmen, idiots, the dumb, and those who have lost a sense or a limb, are excluded from a share of the heritage".[1] A text of Kátyáyana has more particularly defined the impotent person.

2. "Born blind and deaf"; that is, by nature, not those who have become so, from some adventitious cause: the meaning therefore is, those who are blind and deaf from the period of their birth. Nárada says—"An enemy to his father, an outcast and one who is addicted to vice [or has been expelled from society,] take no shares of the inheritance, even though they be legitimate: much less if they be sons by an appointed kinsman".[2]

[1] Manu, IX. 201.

[2] Nárada, XIII. 21.

3. "An enemy to his father": one who ill-treats his father during his life-time, or one who is averse to performing his obsequies when dead.

4. "One who is addicted to vice": one who, by reason of his crimes and vices, is excluded by his relations from drinking water in company with them.

5. Thus Yájñavalkya: "All those brothers who are addicted to vice, lose their title to the inheritance".[1]

6. "Addicted to vice": that is, adhering to an unlawful or an improper course, such as drinking, gambling, &c.

7. So the text, "An outcast, his offspring, an impotent person, one lame, insane, or an idiot, a blind man, and one afflicted with an incurable disease, should be supported, since they are excluded from the inheritance".[2]

8. "Lame": that is, one who cannot walk with both his feet.

9. "An idiot": one who is incapable of receiving [instruction in] the Vedas.

10. So Nárada: "Those of the family, who are afflicted with a chronic and painful disease, idiots, and those who are insane, blind, or lame, should be maintained; but their sons are partakers of the inheritance".[3]

11. "Chronic": that is, from the period of birth.

12. "Painful": such as leprosy, &c.

13. Their sons, however, if devoid of these faults, are partakers of shares.

14. Maintenance is directed for all, except the outcast, for a text of Nárada declares, that "Food and raiment is ordained for all, excepting the outcast".[4]

15. By the term "outcast", his son must also be considered as understood, for he becomes so, in consequence of having been begotten by an outcast.

16. Baudháyana has declared this explicitly: "Let the co-heirs support with food and apparel those who are incapable of business, as well as the blind, idiots, impotent persons, those afflicted with disease and calamity, and others, who are incompetent to the performance of duties: excepting, however, the outcast and his issue".[5]

17. The incompetency of the wives of such persons to inherit has also been declared by the following text: "Their childless wives conducting themselves aright, must be supported, but such

[1] Found in Manu (IX. 114).
[2] Yájñavalkya, II. 140.
[3] Nárada, XIII. 22.
[4] Found in Baudháyana, II, 2, 3, 43.
[5] Baudháyana, II, 2, 3, 37—40.

as are unchaste should be expelled, and so indeed should those who are perverse. Their daughters also should be maintained until provided with husbands".[1]

CHAPTER IV.

ON DIVISIBLE AND INDIVISIBLE PROPERTY.

SECTION I.

On property liable to partition.

1. Kátyáyana has declared the property which is liable to partition: "What belonged to the paternal grandfather, or to the father, and anything else acquired by themselves, must all be divided at a partition among heirs".[2]

2. "And anything else": the particle "and" is here connected with "themselves"; therefore, from the use of this particle which occurs in the expression "and acquired by themselves", the acquisition of another is also to be understood: provided however such acquisition have been made through the joint stock, or by [joint] personal labour.

3. Consequently, the acquirer has two shares of wealth which has been acquired by the expenditure of the joint stock, and the rest have only one share each. So Vyása says: "Whatever wealth a man gains with the aid of the patrimony, by valour and the like, the brothers are sharers therein. To him must be allotted two shares, and the remainder should be made equal shares".[3]

4. "To him": that is, the acquirer, and this is reasonable; for the acquisition is made on the part of the acquirer both by the use of the common property, and by personal labour; but on the part of the rest, simply by means of the joint stock.

5. In like manner, when an acquisition is made by two persons: by the personal labour of the one, and by means of the wealth and of the personal labour of the other, then the acquirer by means of personal labour alone, has one share, and the acquirer by wealth and labour, has two shares, by parity of reasoning.

6. Therefore, these three descriptions of property, viz., ancestral property, wealth acquired by a father, and that which has been acquired by the expenditure of joint stock, are partible among all; but wealth acquired by individuals through their own exertions, must be shared exclusively by the acquirers. This is settled.

7. Wealth, however, acquired by science, and such other means, without the use even of joint funds, must be shared with parceners equally or more learned, not with less learned, or unlearned

[1] Yájñavalkya, II. 142, 141.
[2] II Cole. Dig., 487, CCCLXVIII.
[3] II. Cole. Dig., 281, CX.

parceners. The text of Kátyáyana declares: "No part of the wealth which is gained by science, need be given by a learned man to his unlearned co-heirs; but such property must be yielded by him to those, who are equal or superior in learning".[1]

8. The term "learning", above, refers alike to the words "equal" and "superior", like the eye of the crow.[a] Therefore the meaning is, "parceners, equally, or more learned".[2]

9. But if, during the period of acquisition of science by one brother, another brother should, through his own personal exertions, and by means of his individual wealth, support the family of such brother, then, even though utterly ignorant, he is entitled to a share of the wealth which his [acquiring] brother had gained by means of science. Thus Nárada declares: "He who supports the family of a brother employed in the acquisition of science shall, even though ignorant, receive a share from the wealth obtained by means of such science".[2]

10. "Ignorant": unlettered.

11. But all the parceners, whether learned or ignorant, are entitled to share in wealth which has been acquired by science, imparted to them in their own family, by their father and the rest. Brihaspati says: "Whatever wealth has been earned through valour by brothers, who have derived science from their family, or even from their father, is partible".[3]

12. By the words "or even", the grandfather, the uncle and the rest are intended. "Earned through valour": the gains of valour acquired by means of the expenditure of the joint stock, for, it will be hereafter declared, that wealth acquired without the expenditure of the joint stock is impartible.

13. Kátyáyana has particularly described the gains of science, as follows: "What has been gained by the solution [of a difficulty] after a prize has been offered, must be considered as the gains of science, and is not included in partition, [among co-heirs]. What has been obtained from a pupil, or by officiating as a priest, or for [answering] a question determining a doubtful point, or through display of knowledge, or by [success in] disputation, or for superior [skill in] reading, the sages have declared to be the gains of science, and not subject to distribution. The same rule likewise prevails in the arts; for the excess above the price [of the common goods]; and that which is gained through skill by winning from another a stake at play, must be considered as acquired by science, and not liable to partition. So Brihaspati has ordained".[4]

14. "Gained by the solution of a difficulty": as where one agrees with another, "If you resolve this well, then will I give

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[1] II. Cole. Dig., 449, CCCL.
[2] Nárada, III. 10.
[3] II. Cole. Dig., 448, CCCXLIX.
[4] *Ibid*, 444, CCCXLVII.

[a] See note (*a*), page 67, Vol. I.

you so much wealth". What is obtained after this stipulation in consequence of a good solution of the difficulty, is impartible.

15. "Obtained from a pupil": that is, from one to whom instruction has been afforded.

16. "Officiating as a priest": that is, what has been received as a fee, for having performed for a person the duties of a family priest ("Purohita").

17. Also on the occasion of one having propounded a question, relative to any particular science, what he bestows on a person, through satisfaction, at having received from him a complete answer.

18. "So likewise for determining a doubtful point": that is, for a determination on a question, proposed with a view to the removal of a doubt, and in this form: "I will give this gold or other consideration to him, who dispels my doubts on this point of law":—What in fact is gained (after such a proposition being made,) for having dispelled the doubts of the proposer.

19. Or what is gained by a third person deciding justly between two disputant parties, who mutually appeal to him for his judgment, in the determination of a doubt in a matter of dispute.

20. "Or for the display of knowledge": the meaning of which is, what has been received as a present or so forth, for having brilliantly exhibited one's own knowledge in the sacred ordinances, &c.

21. "So by [success in] disputation": that is, what has been obtained by getting the better of another in an argumentative discussion.

22. So likewise, when any particular thing is to be given to one of several Bráhmins who recites the Vedas in an admirable mode. So also, what is gained by painters, goldsmiths, [or other artificers,] by the exercise of an art or science.

23. Also what is "obtained by winning from another at play";—all these are gains of science, and impartible.

24. Kátyáyana has stated a special rule: "Wealth gained through science, which was acquired from a stranger, while receiving a foreign maintenance, is termed acquisition through learning".[1]

25. Therefore, an acquisition made through science imparted by others, than a father or an uncle and the rest, [of the acquirer's own family,] and without the expenditure of the joint stock, must be shared with parceners more or equally learned, but not with those who are less so, or who are wholly ignorant.

[1] II. Cole. Dig., 444, CCCXLVII.

SECTION I.

On property not liable to partition.

1. On this subject Nárada says: "Excepting wealth gained by valour, property received with a wife, and the gains of science, which three are impartible; as also a paternal gift made through affection".[1]

2. The meaning of this text is, that since the gains of valour, what has been obtained from the parents-in-law, &c., on account of having espoused a wife, the gains of science, and what has been received through affection from a father and others, are indivisible; therefore, setting these four aside, the rest [of the wealth] is partible. This is connected with the subject of partition of inheritance. Manu says: "Wealth acquired by learning, belongs exclusively to him who acquired it. So does anything given by a friend, received on account of marriage, or presented as a mark of respect to a guest".[2]

3. "Given by a friend": obtained from a friend.

4. "Received on account of marriage": that is, obtained from the parents-in-law, by reason of having become their son-in-law.

5. "Presented as a mark of respect": obtained for officiating as a priest. Manu declares: "What a brother has acquired by labour and skill, without using the patrimony, he shall not give up without his assent, for it was gained by his own exertion".[3]

6. So Yájñavalkya: "Ancestral property, which had been before usurped by any one, and afterwards recovered by an heir, is not to be divided among the other heirs—nor are the gains of science".[4]

7. "Ancestral property before usurped": supposing any one heir without the expenditure of the joint funds, or unaided by the exertions of the other heirs, to recover such property, it is not partible among them.

8. He has stated a special rule regarding land: "Land inherited in regular succession but which had been lost, and which a single heir shall recover solely by his own labour, the rest may divide, according to their due allotments, having first given him a fourth part".[5]

9. Having given a fourth part of the land recovered, to him who recovered it, let all the rest divide the remaining three shares with him, according to the due proportions to which they are entitled, and take their respective allotments.

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[1] Nárada, XIII. 6.
[2] Manu, IX. 206.
[3] Manu, IX. 208.
[4] Yájñavalkya, II. 119.
[5] II. Cole. Dig., 464, CCCLIX.

10. This is ascertained from these texts [above cited].

11. What has been acquired by a separated or an unseparated parcener without the expenditure of the joint property, and without the assistance of another, belongs exclusively to the acquirer, and is impartible.

12. The distinction, however, to be observed in regard to the gains of science, has already been declared.

13. Manu and Vishṇu have both declared other descriptions of property to be indivisible: "Clothes, vehicles, ornaments, prepared food, water, women, and furniture for repose or for meals, are declared not liable to distribution".[1]

14. "Clothes": apparel for the body.

15. "Vehicles": such as carriages, horses, &c.

16. "Ornaments": rings, &c.

17. "Prepared food": sweetmeats, &c.

18. "Water": in wells or tanks. The water contained in wells and tanks, which have all along belonged to the father and the rest, is not divisible like other property: but must be taken by each co-heir according to his need. A text declares: "The water of wells and tanks must be drawn up and used by turns".[2]

19. "Furniture for repose and meals", such as the couches and seats adapted to the use of each co-heir, and the vessels used by each for the purposes of eating and drinking.

20. Thus Vyása: "A seat, a couch, a place of sacrifice, a field, a vehicle, dressed food, water and women, are not divisible among kinsmen".[3]

21. "A place of sacrifice": that is, where sacrifices are made, or the image of a god is placed; but not wealth obtained by sacrificing, since that has already been included in the gains of science. Thus Kátyáyana: "The path for cows, the carriage-road, clothes, and any thing which is worn on the body, should not be divided, nor what is requisite for use, nor intended for arts. So Brihaspati declares".[4]

22. "What is requisite for use": what is serviceable, such as books, for the use of the learned, should not be divided with fools.

23. Therefore, books must not be taken by the ignorant parceners; they belong to such of the parceners as are learned.

24. But the ignorant brother must receive from the learned parcener some other article, equivalent to the share of the books, to which he is [otherwise] entitled, or else the value itself thereof;

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[1] Manu, IX. 219.
[2] Brihaspati, XXV. 82.
[3] II. Cole. Dig., 470, CCCLXIV.
[4] *Ibid*, CCCLXV.

for if it be assumed that the ignorant parcener has no right whatever in the books, then, supposing books alone to constitute the common property, when a partition took place, the ignorant parcener would be entirely deprived of his share.

25. This is, however, inadmissible, since it would be at variance with the text, which declares: "They who are born, and they who are yet unbegotten, and they who are actually in the womb, all require the means of support: and the dissipation of their hereditary maintenance is censured".[1]

26. Nor must it be supposed, that the application of this text is limited to other cases than the one in question; for if a true conclusion is obtainable without [such] limitation, an erroneous one is arrived at by the supposition [of it].

27. In like manner, whatever is adapted to the exercise of the arts, should belong to those of the heirs who are artists, and not to the unskilled. The rule above stated holds equally good in this instance.

28. Sankha and Likhita declare: "No division of a dwelling takes place: nor of water-pots, ornaments, and things not of general use; nor of women, clothes, and channels for draining water. Prajápati has so ordained".[2]

29. A habitation, a garden, or the like, which has been constructed by one of the heirs, within the premises, belonging to the dwelling-house, during the life-time of the father, is also impartible: for it is fair to presume, that as the father did not prohibit, he permitted it.

30. This is likewise to be understood, supposing another of the heirs to have constructed a similar habitation or the like, within the premises of another dwelling-house [belonging to the father].

31. "Things not of general use": utensils for purposes of food; culinary, &c.

32. "Women": other than female slaves.

CHAPTER V.

On a second partition of property after the reunion of co-parceners.

1. Reunion is in the first place described for the purpose of explaining a partition made by reunited co-parceners.

[1] I, Cole. Dig., 411, XII.

[2] II, Cole. Dig., 469, CCCLXIII.

2. On this subject, Brihaspati says: "He who being once separated, dwells again, through affection, with his father, brother, or paternal uncle, is termed reunited".[1]

3. Therefore, where a person has been once divided from his father and the rest;—afterwards the former partition is annulled by mutual consent of the separated parties, and in consequence of an agreement being concluded to the following effect, "the wealth which is thine, is mine,"—"that which is mine is thine," they resolve on dwelling in the same abode. This is considered reunion.

4. Here, since the father and the others are particularly specified, reunion takes place only with those who are mentioned, and not with nephews and the rest, who are not named; otherwise, the specific mention of father and the others would be unmeaning. Such is the opinion according to the Dáya-Bhága.

5. The followers of the Mithila school are of opinion, that the use of the term "father", and the rest, is illustrative, and that reunion takes place, when those, whose right to a share of the common property is established by their birth, reassociate, after having once separated: consequently, that reunion can occur with nephews and the rest.

6. With regard then to a partition made by reunited parceners:

7. In a second partition, made by reunited brothers, the eldest son has no right of primogeniture, but all the brothers of the same class must have equal shares. Brihaspati says: "Among brothers, who being once separated, again live together, through mutual affection, there is no right of primogeniture, when partition is again made".[2]

8. Here among brothers or others, connected by parity of relationship, reassociated and unassociated, the reunited parceners are first exclusively entitled to the wealth of the deceased reunited parcener. For a text which will be hereafter quoted, declares, that "A reunited [brother] shall take the share of his reunited [co-heir]".[3]

9. In default of such reunited parcener, the divided parceners related as above, are entitled to the succession.

10. In like manner, supposing a father, who has made a partition among his sons, and taken for himself the share allowed him by law, while unassociated with his sons, to beget another son, and afterwards to die, then this son born subsequent to the partition, is entitled to his father's share of the wealth: and not a son who was formerly separated.

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[1] Brihaspati, XXV. 72. [2] Brihaspati, XXV. 73.
[3] Yájñavalkya, II. 138.

11. In like manner the son, who is born after a partition, is not entitled to share in the partition of [the wealth of] the brothers, who were formerly separated [from the father].

12. Thus Brihaspati says: "The younger brothers of those, who have made a partition with their father, whether children of the same mother, or of other wives, shall take their father's share. A son born before partition has no claim on the paternal wealth; nor one, begotten after it, on that of his brother. They have no claims on each other, except for acts of mourning and libations of water".[1]

13. "The younger brothers": that is, those born subsequent to the partition.

14. If a father should die after having reunited himself with any one of his sons whomsoever, then his wealth is equally shared by the reunited sons and those born subsequent to the partition, according to the text [of Manu and Nárada] that "A son, born after a division, shall alone take the paternal wealth; or he shall participate with such [of the brothers] as are reunited with the father".[2]

15. A special rule is however to be regarded: where an acquisition has been made by a reunited father, by means of his individual wealth, and through his own personal labour and exertions, such acquisition shall belong exclusively to the son born after the partition, and not to another son who was reunited.

16. Brihaspati says: "All the wealth which is acquired by the father himself, who has made a partition with his sons, goes to the son begotten by him after the partition. Those born before it are declared to have no right".[3]

17. Here by the use of the word "himself," the author shews the acquisition to have been made with individual wealth, and by means of personal exertion.

18. In like manner, a debt incurred by a disunited father on his own account alone, shall be discharged by the son born after partition exclusively. "As in the wealth, so in the debts likewise, and in gifts, pledges, purchases",[4] being the remainder of the text above quoted. (16.)

19. Where, however, a debt has been incurred by a reunited father, for the sake of the community, it shall be discharged both by the reunited parceners, and the sons born subsequent to a partition.

20. One born after partition, is one who has been born of a conception which took place subsequent to partition, for without conception, there can be no act of procreation.

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[1] Brihaspati, XXV. 17, 18, 20.
[2] Manu, IX. 216.
[3] Brihaspati, XXV. 19.
[4] *Ibid*, XXV. 20.

21. Hence, if a partition be made among sons, while the conception of the woman be yet unknown, then the property which had been divided must be re-collected and a second partition take place, at which the son born of such conception, will be entitled to his share with those brothers who had formerly separated; but the paternal wealth must not be shared with him.

22. What has been declared with regard to the right of a son born after partition to succeed to the wealth of his father, relates to a father's own acquisition, since it is impossible that any partition of the ancestral property should take place until the mother's and the step-mother's courses have ceased, and supposing even such a partition to have been made by mistake, it would have no effect, as being contrary to law.

23. All sons, whether born subsequent to partition or otherwise, are entitled to participation in such property; consequently, if a father should accidentally have made a partition of ancestral property consisting of land, &c., and live separate after having taken the share, to which he is by law entitled, still the son born after partition, would be entitled to obtain from his brother and the rest, a share in the wealth derived from the grandfather, and the former partition having been illegally made, must be considered null and void.

24. The text of Vishṇu on this point declares, that "Sons, with whom the father has made a partition, should give a share to the son born after the distribution".[1]

CHAPTER VI.

On partition made by a father of ancestral, and of his own acquired property.

1. A partition made by a father of his own acquired wealth, is regulated by his will alone; but in regard to a partition of the ancestral property, the circumstance of the cessation of the mother's courses must be associated with the father's will. This is the difference.

2. Thus Vishṇu declares: "When a father separates his sons from himself, his will regulates the division of his own acquired wealth".[2]

3. But in regard to ancestral property, Gautama says: "After the father, let sons share his estate, or while he lives, if the mother be past child-bearing, and he desire partition".[3]

4. It should not be argued that this text of Gautama is also applicable to a father's own acquired property; for if it be alleged

[1] Vishṇu, XVII. 3. [2] Vishṇu, XVII. 1.
[3] Gautama, XXVIII. 1 and 2.

that partition of the father's acquired wealth takes place indeed on the cessation of the mother's courses, it would follow that the text [of Gautama] which declares: "A son begotten after partition takes exclusively the wealth of his father", would be wholly useless: since no son can be born on the extinction of the mother's courses.

5. It must not be asserted, that this last cited text of Gautama relates to ancestral property, and is, consequently, not useless, for supposing such to be the case, a son born after partition, would be debarred from participation in the ancestral property, and consequently deprived of subsistence: which is forbidden by the text, declaring "They who are born, and they who are yet unbegotten, and they who are actually in the womb, all require the means of support and the dissipation of their hereditary maintenance is censured".[1]

6. Nor should it be said that the son begotten after partition would not be deprived of subsistence, since he would be entitled after his father's death to that share of the ancestral property, which had been taken by him, for, supposing the father to have dissipated the whole of such property, the son would inevitably be deprived of subsistence.

7. The fact then is that this text of Vishṇu: "When a father separates his sons from himself, his will regulates the division of his own acquired wealth", is useful, as shewing that the father's will is absolute in regard to the division of this wealth, and accordingly, that the text of Gautama which requires the concomitancy of the cessation of the mother's courses with the will of the father, is strictly applicable to ancestral property. This is correct.

8. Hence at a partition made by a father of his own acquired wealth, he may take as much of it as he pleases, and divide the remainder among his sons according to the text of Vishṇu already quoted, and the following text of Hárita: "A father, during his life, distributing his property, may retire to the forest, or enter into the order suitable to an aged man; or he may remain at home having distributed small allotments, and keeping a greater portion. Should he become indigent, he may take back from them".[2]

9. "The order suitable to an aged man": that is, the order of an ascetic.

10. "Should he become indigent": meaning, should he have spent the whole of his wealth.

11. If a father should give to any one of his sons a greater share, by reason of his good qualities, or of his piety, or of his having a numerous family, or of his incapacity, such a distribution is authorized by law.

12. Nárada says: "For such as have been separated by their

[1] I. Cole. Dig., 411, XII. [2] II. Cole. Dig., 205, XXIII.

father with equal, greater or less allotments of wealth, that is a lawful distribution: for the father is lord of all".[1]

13. "Lord"; that is, possessed of the power to alienate at pleasure: consequently, this text relates to property acquired by a father himself, by reason of the impossibility of the existence of such a power as above described, in regard to ancestral wealth.

14. A father must not, however, while afflicted by sickness or disorder, or labouring under distraction of mind, or inflamed with anger, or influenced by partiality for the son of a favourite wife, distribute a less or greater share to one of his sons, without the existence of any of the causes above-mentioned: for the text of Nárada declares, "A father who is afflicted with disease, or influenced by wrath, or whose mind is engrossed by a beloved object, or who acts otherwise than the law permits, has no power in the distribution of the estate".[2]

15. "Engrossed by a beloved object": such as excessive partiality, for the son of a favourite wife.

16. But when a father makes a partition of the ancestral property, he may take two shares for himself, and allot to each of his sons a single share: for the text of Brihaspati which declares: "The father may himself take two shares at a partition made in his life-time", relates to ancestral wealth.

17. It must not be supposed that this text refers to the father's own wealth, since it would contradict the texts of Vishṇu and the rest, which declare, that what a father may in such case take, depends entirely upon his own will; and as he may take a greater or less share, at his pleasure, the restriction of two shares only, would be unmeaning.

18. A father has not the power to make an unequal distribution of ancestral property, consisting either of land or a corrody, or slaves, even though any of the causes before mentioned, namely, the superior qualifications of one particular son, &c., should exist, and the text of Yájñavalkya which declares: "The ownership of father and son is the same in land, which was acquired by his father, or in a corrody, or in chattels",[3] is intended to restrain the exercise of the father's will; for it is impossible that, as long as the father, the owner of the ancestral property, continues to survive, his sons should have ownership therein.

19. But the father possesses a power in regard to ancestral property, other than land, &c., such as pearls, gems, similar to that which he has in the disposal of his own acquired wealth. Yájñavalkya declares: "The father is master of the gems, pearls and corals, and of all; but neither the father, nor the grandfather is so, of the whole immoveable estate".[4]

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[1] Nárada, XIII. 15.
[2] *Ibid*, XIII. 16.
[3] Yájñavalkya, II. 120.
[4] I. Cole. Dig., 411, XII.

20. Here, by the specification in the first instance, of *gems, pearls* and *corals,* and afterwards by the use of the word *all,* gold and other effects, exclusive of the three descriptions of property, consisting of land, &c., are intended. The word *whole,* again, which occurs in the second portion of the above text, is made use of for the purpose of showing, that a prohibition does not exist against a gift of immoveable property, not incompatible with the due support of the family. Thus it is stated in the Dáya-Bhága.

21. In like manner, a father may, at his pleasure, allot to his son, the deduction of a twentieth from his own acquired wealth, or the ancestral property. Yájñavalkya says: "If a father make a partition, let him separate his sons at pleasure, and either give the eldest the best share, or if he choose, all may be equal sharers".[1] Here the first half of this text relates to a father's own acquired wealth, and the last refers to ancestral property. This is the opinion stated in the Dáya-Bhága.

22. When a father makes a partition of his own acquired property, he should give a share equal to the share of a son to such of his wives, as are destitute of male issue. A text of Vyása declares: "Even childless wives of the father are pronounced equal sharers".[2]

23. The expression "of the father" in the genitive case serves to denote, that this distribution is made by him: for it will be hereafter stated, that step-mothers are not entitled to shares, at a partition made by sons.

24. This donation of equal shares occurs where no peculiar property has been bestowed on a wife by her husband and the rest. So Yájñavalkya says: "If he make the allotments equal, his wives, to whom no separate property has been given by their husband or their father-in-law, must be rendered partakers of like portions".[3]

25. Where peculiar property has been bestowed on some of the wives, the other wives destitute of male issue must be rendered by the father partakers of wealth, to the same amount.

26. But where such peculiar property has not been given, then they must be rendered equal sharers with the sons. This is the law in the case where the sons are made equal sharers.

27. According to the opinion of the Misras, where a father has allotted lesser shares to his sons, and reserved the greater portion for himself, equal shares must be made up to his wives from his own portion.

28. In the case however of peculiar property having been given, [to all the wives,] then they will only receive half a share

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[1] Yájñavalkya, II. 114. [2] II. Cole. Dig., 243, LXXXIV
[3] Yájñavalkya, II. 115.

by the rule of analogy observed in the case of a superseded wife, who has received peculiar property, and who is entitled to receive only half the gratuity [otherwise] given to a wife on her supersession.

29. So the text of Yájñavalkya: "To a woman, whose husband marries a second wife, let him give an equal sum, as a compensation for the supersession, provided no separate property have been bestowed on her; but if any have been assigned, let him allot half".[1]

30. The wealth which is bestowed on a first wife, by a man desirous of marrying a second, is termed a gift of supersession, for the object of it is to contract a second marriage.

31. As much as has been given to a second wife, so much should be bestowed on the first wife. This is the meaning, and it is conformable to the opinion of the Dáya-Bhága. The Misras however assert, that when peculiar property has been bestowed, then there is no gift of a half share, since it is not enjoined by any text.

32. The son of a Súdrá by a female slave may, at the will of his father, be rendered an equal sharer with the son born of his wedded wife. On the death of his father, he is entitled to half a share; in default of such a brother, and of a daughter's son, he is entitled to the whole of his father's wealth: but if there be a daughter's son, he must be made an equal sharer with him.

33. Thus Yájñavalkya declares: "Even a son begotten by a Súdrá on a female slave, may take a share by the father's choice: but if the father be dead, the brothers should make him partake of the moiety of a share: and one who has no brothers, may inherit the whole property in default of daughter's sons".[2]

34. "By the father's choice": that is, at his pleasure.

35. "In default of daughter's sons": but if there be a daughter's son, then the son of the Súdrá will be entitled to participate equally with him. The participation is in this case equal, according to the rule by which it is thus settled, when no specification exists to the contrary. It is so stated in the Dáya-Bhága.

CHAPTER VII.

On partition by brothers after the father's death.

1. Partition by brothers is not lawful during the life-time of the mother, notwithstanding ownership of wealth is vested in them on the death of the father. The text of Manu, "After the [death of the] father and the mother, the brothers, being assembled, must divide equally the paternal estate: for they have not power over

[1] Yájñavalkya, II. 148.

[2] Yájñavalkya, II. 133 and 134.

it, while their parents live",[1] indicates that partition should take place after the death of the mother.

2. If, however, a partition be made during the life-time of the mother, then she must be made an equal sharer with her own sons, according to the text which declares that the mother should, on the decease of her husband, be made an equal sharer with her sons.

3. Here since the term "mother" relates to the natural parent, the step-mother does not participate, but she must be maintained by giving food and raiment.

4. In like manner, in a partition about to be made of the grandfather's wealth by grandsons, the grandmother must be made an equal sharer. By the expression "similar to mothers", in the text, "All grandmothers are pronounced similar to mothers",[2] it is shewn, that as the mother is entitled to an equal share in a partition of her husband's wealth, made by her own sons, so in a partition about to be made of the grandfather's wealth by grandsons, the grandmother has an equal share with them.

5. In this case likewise, the rival wives of the grandmother are not entitled to participate; they need only be maintained.

6. For the reason above stated, (§ 3) the term grandmother refers exclusively to the natural parent of the father. This is the received opinion: although in fact, considering the use of the words "all" and "grandmothers", (in the plural number) in the text above quoted, it is reasonable, that the rival wives of the grandmother should be allowed to participate.

7. But the followers of the Mithila school assert, that the word *mother* in this text of Brihaspati: "The mother should on the death of the husband, be made an equal sharer with her sons",[3] intends also the step-mother, in support of which opinion, they adduce the following text of that author of the same import: "In his default, the mother is an equal sharer with her sons; mothers are equal sharers with them, and daughters are entitled to a fourth part".[4]

8. "In his default": in default of the father, when a partition is about to be made by grandsons. "The mother": she who has male offspring. "Mothers": step-mothers, destitute of male offspring; all these are sharers in equal proportions with their sons.

9. The sisters also of these sharers must be rendered participators to the amount of a fourth share receivable by their brothers respectively, for the purpose of marriage.

10. The followers, however, of the Mithila school assert, that the sisters should be made partakers of as much as will suffice for the object of their marriage, and according to their opinion also,

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[1] Manu, IX. 104.
[2] II. Cole. Dig., 243, LXXXIV.
[3] Brihaspati, XXV. 64.
[4] *Ibid*, XXV. 7.

the rival wives of the grandmother are entitled to participate in the wealth of their husband. It should be understood thus.

11. A partition made by brothers of the same class, is of two descriptions; either with specific deductions or equal. A text [of Brihaspati] declares: "Partition of two sorts is ordained for co-heirs: one in the order of seniority, the other by allotment of equal shares".[1]

12. "Order of seniority": indicates partition by the mode of deduction. It must not, however, be supposed that because the mode by equal division is more generally practised, and the mode by deduction seldom observed, that the former is the only mode sanctioned by law, and the latter unauthorized: for a partition by the mode of deduction may take place at the will of [younger] brothers by reason of greater veneration [for their elder brother].

13. But the mode by equal division is the only one adopted in the present age, because younger brothers are now-a-days seldom met with, who entertain this great veneration, and elder brothers deserving of it are [equally] rare.

14. "Seniority": that is, priority of birth among brothers, all born of mothers or step-mothers alike by class. A text of Manu declares: "As between sons, born of wives equal in their class [and] without [any other] distinction, there can be no seniority in right of the mother; but the seniority ordained by law is according to birth".[2]

15. "Women equal in their class": that is, of the same class.

16. An appointed daughter and a legitimate son are entitled to equal participation. The appointed daughter is not entitled to the share of an elder brother by reason of priority of birth, for a text of Manu declares: "But a daughter having been appointed to produce a son for her father, and a son [begotten by himself] being afterwards born, the division of the heritage must in that case be equal: since there is no right of primogeniture for a woman".[3]

17. The deduction of a twentieth takes place only in the case of partition among brothers not uterine, but in a partition made among brothers of the whole blood alone, the eldest is entitled to two shares. Thus Brihaspati declares: "All sons of regenerate men, born of women alike by class, should share alike, after giving a deduction to the eldest".[4]

18. "Women alike by class": meaning, where there are several of them. Since the mention of a deduction occurs in this text with respect to "sons born of [different] women alike by class", therefore, what has been declared regarding the eldest

[1] Brihaspati, XXV. 7.
[2] Manu, IX. 105.
[3] Manu, IX. 134.
[4] *Ibid*, IX. 117.

taking two shares, by that part of the text of Manu, which says: "Let the eldest take a double share",[1] and also by the text of Gautama: "Let the first-born have a double share", must be understood to apply to the case of a partition made among uterine brothers alone, according to the principle which recognizes a special provision, limiting the operation of a general rule.

19. Further, since the above cited text [of Brihaspati] specifies "women alike by class", Bráhmin and other sons born of women of different castes are entitled in their due order, to four, three, two and one share. Thus Manu declares: "Let the son of the Bráhmiṇi take four parts; the son of the Kshatriyá three; let the son of the Vaisyá have two parts; let the son of the Súdrá take a single part [if he be virtuous]".[2]

20. A Súdrá is entitled to one share, because he is bound to perform certain religious initiatory ceremonies, after the birth of his son.

21. The term "regenerate", in the above quoted text of Brihaspati (§ 17) is merely illustrative; consequently, the deduction of a twentieth, and the other [namely, the double share,] take place even in favour [of the eldest son] of a Súdrá, who is equally entitled to a larger share, since he, without distinction, confers benefits by delivering his father from the hell, named Put.

22. Therefore, the text of Manu, which declares: "For a Súdrá is ordained a wife of his own class and no other: all produced by her shall have equal shares, though she have a hundred sons",[3] should be considered as prohibiting the marriage of a Súdrá with a woman of a different class, and declared for the purpose of forbidding an unequal distinction by reason of difference of class; not as prohibiting the deduction of a twentieth, &c. This is considered to be right.

23. In a partition made between legitimate and adopted sons, the legitimate son has two shares, and the adopted sons who are of the same class with the father, take one share; but adopted sons belonging to an inferior class, are not entitled to any share. They need only be supported with food and raiment.

24. Nárada declares: "All these sons are pronounced heirs of a man, who has no legitimate issue by himself begotten, but should a true legitimate son be afterwards born, they have no right of primogeniture. Such among them as are of equal class [with the father], shall have a third part as their allotment; but those of a lower class must live dependent on him, supplied with food and raiment".[4]

25. "Heirs": that is, partakers of the father's whole estate. "Such among them": meaning, such sons as are of equal class [with the father].

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[1] Manu, IX. 117.
[2] *Ibid*, IX. 153.
[3] Manu, IX. 157.
[4] Not found.

26. A partition should be made by sons of the wealth of their deceased father, which remains after discharging his debts; or with the consent of the creditors, the partition may take place first, and the debts be afterwards discharged.

27. Nárada declares: "What remains of the paternal inheritance over and above the father's obligations, and after payment of his debts, may be divided by the brothers; so that their father continue not a debtor".[1]

28. Here from the expression, "so that the father remain not a debtor", it appears, that the debts may be cleared off subsequent to the partition: otherwise, it would be unmeaning.

29. In like manner, whatever excess has been expended by one brother, in consequence of his having a large family, should not be taken into account at the time of the partition. But a partition should be made of the wealth, which is actually forthcoming.

30. The text of Nárada declares: "Among unseparated kinsmen, let not one restore what has been expended. A partition should take place of the visible wealth, corrected for income and expenditure".[2]

31. From the use of the particle ["va"] in this text, the meaning of the word is intended to be conveyed. Consequently, having compared the amount of the wealth, which had accumulated at a time when no partition had taken place, with the amount expended, a division should be made of the balance actually remaining.

32. Vyása has declared, that the initiatory ceremonies of uninitiated brothers and sisters, should be performed from the paternal wealth: "Uninitiated brothers should be initiated from the father's wealth by those elder brothers, for whom the ceremonies have been already performed",[3] and the sisters should also be disposed of in marriage; if there be no wealth of the father, they must be initiated at the expense of their brothers. A text of Nárada recites: "If no wealth of the father exist, the ceremonies must without fail be defrayed by brothers already initiated, contributing funds out of their own portions".[4]

CHAPTER VIII.

On the distribution of effects concealed.

1. The partition of effects concealed by some one parcener at the time of partition, and subsequently discovered, is next declared.

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[1] Nárada, XIII. 32.
[2] Not found.
[3] II Cole. Dig., 297, CXXV.
[4] Nárada, XIII. 34.

2. On this subject the following text of Manu occurs: "When all the debts and wealth have been justly distributed according to law, any thing which may be afterwards discovered, shall be subject to an equal distribution".[1] The distribution of such concealed effects with the concealer, should be exactly conformable to that which had been before made. A less share is not to be given to him by reason of his concealment, nor is he on that account to be altogether excluded from participation. This is the meaning of "shall be subject to an equal distribution". It is not intended by the text, that all shall share equally in the concealed effects, as there exists not any reason for the prohibition of the deduction of a twentieth, and it would moreover follow, that the Bráhmin and Kshatriyá sons would participate equally. Thus Kátyáyana declares: "Effects which are withheld by them from each other, and property which has been ill-distributed, being subsequently discovered, let them divide in equal shares. So Bhrigu has ordained".[2]

3. "Subsequently discovered": by this it is shown, that partition is to take place of the concealed effects alone, and not that a second partition is to be made, of what has already been once divided.

4. "Property which has been ill-distributed": intending that property, of which a distribution has been made contrary to law, through error and the like; it must be again divided according to law, for that part of the text of Manu, which declares: "Once is the partition of inheritance made",[3] is intended to forbid a second partition after the first has been legally made. It is therefore settled, that the division of concealed property must be made with the person, who concealed it, as has already been declared.

CHAPTER IX.

On the allotment of a share to a co-parcener returning from abroad.

1. Brihaspati declares: "Whether partition have or have not been made, whenever an heir appears, he shall receive a share of whatever common property there is".[4]

2. "An heir": any one who is entitled to inherit.

3. "Common property": common to all.

4. Further. "Be it debt, or writing, or house or field, which descended from his paternal ancestor, he shall take his due share of it, when he comes, even though he have been long absent."

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[1] Manu, IX. 218.
[2] II Cole Dig., 485, CCCLXXVII.
[3] Manu, IX. 157.
[4] Brihaspati, XXV. 22

5. By this, it is not meant that he alone shall take his due share of it, but that his descendants, (who are sapiṇḍas) down to the seventh degree, shall also take their shares,—as the same author has declared: "If a man leave the common family and reside in another country, his share must no doubt be given to his male descendants, when they return. Be the descendant, third, fifth or even seventh in degree, he shall receive his hereditary allotment on proof of his birth and name. To the lineal descendants, when they appear of that man, whom the neighbours and old inhabitants know by tradition to be the proprietor, the land must be surrendered by his kinsmen".[1]

6. "Old inhabitants": meaning cognates.

7. "Neighbours": those residing in the vicinity.

8. "Land": this expression is merely used illustratively for any description of common property.

9. Therefore, it is a settled point, that one who travelled in a foreign country, at a period when no partition had taken place, and returned after a long lapse of time, as well as his descendants, as far as the seventh in degree, after they shall have made themselves recognized by the elder inhabitants and neighbours, shall obtain a lawful share of the heritable wealth.

10. This is the law relative to the allotment of a share to a parcener, who had journeyed into a strange land.

11. But descendants only, as far as the fourth degree of one, who had remained all along in his own country, are entitled to share his wealth, for it has been formerly declared, that the fifth in descent and the rest confer no benefits on a deceased owner, since they are not competent to present funeral oblations to him at solemn obsequies.

CHAPTER X.

ON PARTITION BETWEEN SONS BORN OF THE SAME MOTHER, BUT OF DIFFERENT FATHERS.

1. Vishṇu says: "If there are two sons begotten by two fathers, but born of the same mother, let each of them take that which was the father's property and not the other".[2] Let the son take the wealth of him, from whosesoever seed he is produced, and not the other, that is, the son born from another's seed should not take it. Such is the meaning.

2. The law regarding equal, &c., does not therefore apply to this case.

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[1] Bṛihaspati, XXV. 24 and 25.

[2] Not found in Vishṇu.

3. In like manner, in a partition by sons of this description, let each son take, (exclusively of the other) of the wealth of their mother, what was given to her, by their fathers respectively, according to the text of Nárada which declares: "If two sons begotten by different fathers contend for the wealth of the woman, let each of them take that which was his father's property and not the other". [1]

4. In the case, however, of an acquisition made exclusively by the mother, the participation is equal.

CHAPTER XI.

ON THE POWER OF ONE PARCENER TO MAKE A DONATION OR OTHER ALIENATION OF JOINT PROPERTY.

1. Some maintain, that a gift cannot be made by one [parcener] of joint property, a prohibition against such transfer being contained in this text [of Brihaspati]: "The prohibition of giving away, is declared to be eight-fold: A man shall not give joint property, nor his son, nor his wife, nor a pledge, nor all his wealth, nor deposit, nor a thing borrowed for use, nor what he has promised to another", [2] and they have further deduced the want of the right of one parcener to make a gift of the whole immoveable estate, or of what is common to the family, from the two following texts of Vyása: "A single parcener may not without the consent of the rest make a sale or gift of the whole immoveable estate, nor of what is common to the family authority".—"Separated kinsmen, as those who are unseparated, are equal in respect of immoveables; for one has not the power over the whole, to give, mortgage or sell it". [3]

2. The opinion held by those who maintain the invalidity of a gift or sale [of joint property,] at the will of one parcener, is grounded on the doctrine, that co-parceners possess a general property in the estate: in fact, that all of them have a right to the whole estate. This opinion is incorrect; for it has been rejected by the author of the Dáya-Bhága, as unsupported by authority.

3. Accordingly, the author of the Dáya-Bhága, having cited the texts of Vyása, for the purpose of refutation, and taken up the argument maintained from those texts by those of the opposite opinion, namely, the want of authority of any single parcener to make a gift, says: "For here also as in the case of other wealth, there equally exists a property consisting in the power of disposal

[1] Found in Manu, IX. 191. [2] Brihaspati, XV. 2.
[3] Brihaspati, XXV, 93.

at pleasure", and adds: "But the texts of Vyása, exhibiting a prohibition, are intended to shew a moral offence: since the family is distressed by a sale, gift or other transfer, which argues a disposition in the person to make an ill use of his power as owner. They are not meant to invalidate the sale or other transfer". This is settled.

4. "As in the case of other wealth", meaning wealth which is not common.

5. "Here also": "in the very instance of land held in common".

6. "Equally exists": intending that there is no distinction of ownership.

7. Since, therefore, there is no general property of parceners in the whole estate, it is fallacious to suppose, that a plurality of owners constitutes community, and community must, therefore, be considered as meaning the state of not being separated. For as propriety exists in the common property, even before partition, there is nothing to prevent gift or other alienation by a parcener of his own share, even at that time. This is the opinion entertained by the author of the Dáya-Bhága, who maintains a partial right to a certain portion [of the estate ascertainable by partition] vested in each individual owner. Accordingly Nárada says: "When there are many persons sprung from one man, who have duties apart and are separate in business and character, if they be not accordant in affairs, should they give or sell their own shares, they do all that as they please, for they are masters of their own wealth",[1] and thereby shows that in transactions about to be concluded by one parcener, he has the power to give or otherwise dispose of his own share, without the consent of the rest.

8. It should not be said, that this text refers to a state of separation, for since the want of ownership [by one parcener in the portion allotted to another] is in that case clearly determined, the consent of either to the transactions of the other, is totally out of the question. Such being the case, the text [of Brihaspati above cited] which enumerates common property as not being a subject of donation, must be considered merely in the light of a prohibition, and not as meant to invalidate the transfer. It is thus stated in the Smriti Ságara and other books.

9. Therefore, a gift by a parcener of his own share of the common property is valid, whether such gift have been made antecedent, or subsequent, to partition.

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[1] Nárada, XIII. 42 and 43.

CHAPTER XII.

On Slavery.

SECTION I.

Descriptions of slaves.

1. The debt incurred by a slave for the support of the family of his master, while in a foreign country, or elsewhere, must be entirely discharged by the master. Manu says: "Whatever contract a dependant may conclude for the benefit of the family, let not his master, whether in his own or in a foreign country, rescind".[1]

2. "A dependant": a slave.

3. "Contract debt, &c." Slaves are of fifteen descriptions and are thus described by Nárada: "One born [of a female slave] in the house of her master; one bought; one received [by donation]; one inherited [from ancestors]; one maintained in a famine; one pledged by a former master; one relieved from a great debt; one made captive in war; a slave won in a stake; one who has offered himself in this form, 'I am thine'; an apostate from religious mendicity; a slave for a stipulated time; one maintained in consideration of service; a slave for the sake of his bride; and one self-sold, are fifteen slaves declared by the law".[2]

4. "Born in the house": born of a female slave in the house [of her master].

5. "Inherited": obtained from ancestors.

6. "Maintained in a famine": by reason of a dearth.

7. "Pledged by a former master": granted as a pledge in consideration of a loan.

8. "One received": one who has consented to become a slave, in consequence of being relieved from a great debt. Such is the meaning.

9. "I am thine": one who not being the slave of any one, surrenders himself in this form to slavery.

10. "An apostate from religious mendicity": abandoning the order of Sanyási.

11. "Stipulated": one who, influenced by some motive or other, contracts an engagement in this form, "I am thine for a certain period".

12. "Maintained": one who has consented to become a slave even in a time of plenty, for the sake of obtaining a maintenance.

13. "A slave for the sake of his bride": one who has consented to slavery under the influence of desire. Brihaspati says:

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[1] Manu, VIII. 167.

[2] Nárada, V. 26—28.

"But the man who cohabits with the female slave of another should be considered as a slave for the sake of his bride; he must perform work for her master like other slaves, or like servants for pay".[1]

14. "Her master": the master of the female slave.

15. Nárada declares, as follows, respecting the apostate from religious mendicity: "The man who is an apostate from religious mendicity, becomes the slave of the king, giving a pair of cows, and he ought never to be emancipated or purified".[2]

16. Those only of the Kshatriyá and Vaisyá castes who thus apostatize, become slaves to the king: but Bráhmins of this description should suffer banishment, in lieu of slavery. Thus Kátyáyana says: "Where men of the three twice-born classes forsake religious mendicity, let the king banish a man of the sacerdotal class, and reduce to slavery a man of the military or commercial class".[3]

17. The expression "military or commercial" appears in the form of a conjunctive compound, and if considered in the [accusative or] 2nd case, it becomes the object of the transitive verb.

SECTION II.

On Emancipation from slavery.

1. Of the slaves above-mentioned, the first four: (one born in the house, one bought, one received, one inherited,) and the slave self-sold, are not of right released from slavery, unless they be emancipated by the indulgence of their masters.

2. "A slave maintained in a famine", becomes emancipated on re-paying what he consumed during the dearth and on giving a pair of oxen.

3. "A slave maintained only", is enfranchised by relinquishing his maintenance.

4. "A slave for the sake of his bride", is emancipated by quitting her.

5. "A slave pledged", is redeemed from his slavery to the creditor, on the re-payment of the debt incurred by his [former] master.

6. Should any one of these slaves rescue his master from danger menacing his life, or from impending peril, he is entitled to emancipation.

7. Kátyáyana declares: "A free woman, or one who is not a

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[1] Brihaspati, XVI. 7. [2] Nárada, V. 35.
[3] II. Cole. Dig., 16, XXX.

slave of the same master, becoming the bride of a slave, also becomes a slave to her husband's owner, for her husband is her lord, and that lord is subject to a master".[1]

8. Here, by reason of the connection implied by the term "slave", the woman is understood to become the female slave of the master, suggested by that term.

9. The female slave is of two descriptions: first, not emancipated to any one; and, secondly, the slave of another.

10. The woman of the first description becomes simply by her marriage with a slave, the female slave of the master of her husband.

11. The female of the second description becomes a slave with her husband's permission, but not otherwise.

12. In like manner by parity of reasoning, if a man, not the slave of any one, marry a female slave, then he becomes a slave to the master of his wife.

13. But should a man, the slave of another, marry with the consent of his master, he becomes the slave of the master of the female slave.

14. In like manner, if a female slave unite herself in marriage with a slave, without her master's permission, then each remains the property of his or her master, but their offspring should be shared by both owners.

15. It must not be supposed from the following texts of Manu, "Whatever man owns a field, if seed, conveyed into it by water or wind, should germinate, the plant belongs to the land owner; the mere sower takes not the fruit. Such is the law concerning the offspring of cows and mares, of female camels, goats, and sheep, of slave girls, hens, and milch buffaloes",[2] that such offspring belongs exclusively to the owner of the female slave; for the female slave therein mentioned, refers to one, who has been once married, [and afterwards contracted another marriage with the slave of a different owner]. But the offspring, as above described, of a female slave [regularly] married, must be shared.

16. Thus is concluded the Compendium of the Law of Inheritance, by Sri Krishna Tarkálankára Bhattáchárya.

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[1] II. Cole. Dig., 31, LV.

[2] Manu, IIX, 54 and 55.

THE
VIVADARATNAKARA.

CHAPTER I.

Partition of Heritage.

In this connection, Manu says: "Thus has been declared to you the law for the conduct of man and wife abounding in affection. Learn now the law of partition of heritage".[1] Nárada says: "Where division is made by sons of their father's wealth, that topic of litigation is called by the wise partition of heritage".[2] *Commentary*—'Where' means 'in which topic of litigation'. '*Prakalpyate*' means 'made'.

Manu says: "After the father and the mother, let the brothers being assembled divide their father's wealth equally; for while their parents live, they have no power over it".[3] *Commentary*—The word '*samam*' means 'equally'; the meaning is that in such a case the doctrine of reserving a twentieth share, etc., does not apply. If it be contended that Manu lays down this doctrine of reserving a twentieth share in connection with partition between brothers after their father's decease, and that therefore the division cannot be equal, it is replied that that text applies to cases of eldest sons possessed of good qualities, etc. But Udayakara in his commentary upon this text observes that the word 'equally' is intended to refer to the wealth left after the deduction of the twentieth share, etc., is made. Halāyudha and Pārijáta read '*Saha*' (together) in the place of *Samam* (equally) and Párijáta in his commentary says that '*Saha*' means 'mutually'. The word '*Pátriká*' is an *Ekasesha* compound formed by adding the *Taddhita* suffix. Halāyudha says that the word '*Pátrika*' includes the mother's wealth also. Some say that even if the word '*Pátrika*' were an *Upádána*, it must be understood as including the wealth of the paternal grandfather and others as the text which begins with "In the property of the paternal grandfather" speaks of partition of such property also. Both these must be held to be included in the term.

Devala says: "Let the sons divide the father's wealth after his decease; for they have no ownership while he is alive and free from defect".[4] *Commentary*—'Free from defect' means 'free from such defect as liability to excommunication, etc.'.

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[1] Manu, IX. 103.
[2] Nárada, XII. 1.
[3] Manu, IX. 104.
[4] II. Cole Dig., 199, V.

Nárada says: "When the father has gone to heaven, let the sons divide the father's wealth. Let the daughters divide the wealth of their mother, and in default of daughters, their issue".[1] *Commentary*—Let the daughters divide their mother's wealth; in the absence of daughters, let their issue, *i.e.*, the issue of the daughters divide. This is the meaning. As the portion of the text 'When the father has gone to heaven' indicates partition only among sons, the use of the word '*putra*' (son) is for the purpose of the inclusion of the *kshetraja* and other sons also. It therefore follows that so long as a son of any of the twelve kinds is alive, none else shall take the wealth. The expression 'of the father' is used for the purpose of indicating that there should not be a division among brothers of the gains of learning, etc., acquired by one of them. The word '*thad*' in the original must reasonably be taken to stand for 'daughter' because of proximity. Lakshmidharesvara also is to the same effect; but Prakása and Párijáta hold that the word in the original '*thadanvaya*' means 'the issue of the father, *i.e.*, the son, the son's son, etc.'.

Sankha and Likhita say: "Let sons divide the wealth after their father's death. Sons cannot divide the wealth while the father is alive, although they have subsequently acquired it. They have no power to do so. They are not their own masters in respect of wealth and religious duties while their father is free from defect".[2] *Commentary*—The expression 'subsequently acquired' means 'acquired by the sons independently of their father, by their learning, ability, etc., and by common exertion'.

Manu says: "The eldest son alone shall take the whole patrimony and the rest shall live in dependence upon him as on their father. A man becomes a father by the mere fact of the birth of his eldest son. His obligation in respect to the manes is discharged. The eldest son therefore deserves to take the whole wealth. He on whom the father shifts his obligation and by whom the father attains immortality is alone the son begotten of virtue. The rest (of the sons) are known to be born of desire. The eldest should protect his younger brothers as the father would do his sons, and the younger brothers should, according to law, behave towards their eldest brother as sons should behave (towards their father). The eldest son it is by whom the line prospers or is ruined. The eldest son is most respected in the world and the eldest son is not treated with contempt by good men. The eldest son whose character is most honourable should be regarded like the mother and the father; but even he whose character is not most honourable should be respected like a relative. The eldest should not withhold from the youngers their shares (in the father's wealth)".[3] *Commentary*—The text 'the eldest alone shall take, etc.', means that the eldest son possessed of all qualities of the eldest son is as independent as the father in respect of partible property. The

[1] Nárada, XIII. 2. [2] II. Cole. Dig., 199, VII.
[3] Manu, IX. 105—110.

expression 'shall live in dependence on him' means 'shall follow his pursuit'. The expression 'becomes a father' means 'has obeyed the injunctions of the sastras enjoining him to procreate issue'. The expression 'by the mere fact, etc.', shows that *samskaras* are immaterial. 'His obligation is discharged' means 'that he is released from one of the three obligations indicated by the *Sruti* which says that every man is born with three obligations'. The word '*Sannayati*' means 'unites', '*Anantyam*' means 'happiness without end'. '*Asnute*' means 'obtains being freed from obligation'. The text 'the rest are born of desire' is an exaggeration. (The eldest son) should treat (the rest) like a father, *i.e.*, should not cheat them. The younger brothers should behave like sons, *i.e.*, should bear no grudge towards him. The eldest son makes the family prosper by good actions and protecting his younger brothers. The text 'or is ruined', suggests such a possibility. The duty of the eldest son is to support and protect his younger brothers, etc. He must be treated like a relative, *i.e.*, must be respected by such acts as rising on his arrival, prostrating before him, etc., and honoured as the maternal uncle, etc., not treated with contempt. '*Yautaka*' means 'wealth partitioned and set apart.' The root '*yu*' means 'to mix'. Halāyudah, however, interprets '*Yautaka*' as 'ornaments of the wife, etc.'.

Nárada says: "Let the eldest brother of his own free will support the rest like a father, or let a younger brother who is capable do so. The prosperity of the family depends upon ability (of management)".[1]

Sankha and Likhita say: "Willingly let them live together; united, they may thrive".[2] The meaning is that resting upon mutual support, they will certainly become prosperous.

Manu says: "Let (the brothers) live thus in union or separately in view to the performance of religious duties. By separation, religious duties increase. So is separate living lawful".[3] *Commentary*—As none can have an independent power of disposition over joint wealth, and as, therefore, there can be no performance of sacrifices, etc., which require separate and exclusive property for their performance, partition whose consequence is the acquisition of absolute power over property is said to be legitimate. To live separately in view to perform religious duties is only optional. It does not mean that living together without partition is unlawful like eating flesh. By partition religious duties like *Jyotishtoma* sacrifice increase.

Brihaspati says: "Where brothers live in commensality, the worship of the manes, deities and Bráhmins is one (need be performed by one for the benefit of all); but where they are divided, the same has to be performed in the house of every one of them".[4] 'In commensality' means 'without division'.

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[1] Nárada, XIII. 5.
[2] II. Cole. Dig., 804, XIX.
[3] Manu, IX. 111.
[4] Brihaspati, XXV. 6.

Hárita says: While the father lives, the sons have no independent power in regard to receipt, disbursement and amercement of wealth. But if he be prodigal, absent abroad or afflicted with disease, let the eldest son look to the affairs (of the family)".[1] *Commentary*—'Receipt' means 'using the joint wealth independently of the father'. Párijáta says that the word means 'acquisition of wealth'. The word '*visarga*' means 'giving away'. '*Akshêpa*' means 'recovering money from the debtor'. The word '*Kámadáne*' means 'giving away wealth according to whims'. Prakásakára reads '*Kámamdine*' for '*Kámadáne*' and says that '*Kaman*' indicates the permission granted by the father near at hand and that the word '*dine*' means 'out of his mind'.

Sankha and Likhita say: "Should the father be incapable, let the eldest (son) manage the affairs of the family or, with his consent, his younger brother who knows the business. There can be no partition while the father does not wish it. If he be old, deranged in mind or afflicted with chronic disease, the eldest (son) alone should manage the family estate and protect the rest; for it is well-known that (the prosperity of a) family depends upon wealth. Men whose father is alive have no independence; likewise while their mother is alive".[2] *Commentary*—'*Anantara*' means 'subsequently born'. 'With his consent' means 'with the consent of the eldest son'. 'Deranged in mind' means 'out of his mind owing to disease proceeding from air, etc.' The management of the family depends on wealth. 'Have no independent power' means 'are incapable of making gifts, etc.' The meaning is that so long as a virtuous mother is alive, the sons have no independent power.

Here ends the chapter of Vivadaratnakara on 'Dayavibhaga'.

CHAPTER II.

Partition among sons whose father is alive.

On this point, Manu and Vishṇu say: "Where the father recovers ancestral property given up as irrecoverable, he need not divide such property against his wish with his sons, being self-acquired".[3] *Commentary*—'Ancestral' means 'descended from father, etc.' 'Irrecoverable' means 'which the father was not able to recover'. He need not divide such property, if unwilling, with his son, because it is self-acquired.

Yájñavalkya says: "In land acquired by the grandfather, in corrody or chattel, the ownership of both father and son shall be the same".[4] *Commentary—Nibandha* means that which is fixed, *i.e.*, wealth obtainable from mines, &c. 'Ownership being the same'

[1] II. Cole. Dig., 199, VIII.
[2] *Ibid*, 203, XVII.
[3] Manu, IX. 209.
[4] Yájñavalkya, II. 121.

means that there shall be no greater share allowed to the father and no gift (of the property) at the father's choice.

Vyása says: "In house and land descended from ancestors the father and the son take equal shares. Sons are not entitled to partition in the father's property while the father is unwilling".[1]

Brihaspati says: "In property acquired by the paternal grandfather, moveable and immoveable alike, the right of the father and the son is well-known to be equal. In the paternal grandfather's property lost and subsequently recovered by the father with his own abilities and in property acquired by the father by his learning, valour, etc., the ownership according to the *Smritis* is with the father. He may, as he pleases, make a gift of that wealth or allow a partition of it. In the absence of these, his sons are declared to be entitled to share it equally".[2] *Commentary*—The word 'lost' means 'taken away by others'. The meaning is that property so lost which the paternal grandfather was not able to recover and which was subsequently recovered by the father by his own exertions and property acquired by learning, valour, etc., the father may dispose of, etc. On the right of the sons to make a partition, Nárada says: "(Let the sons divide) after the mother has ceased to menstruate and after the sisters have been married or after cohabitation has ceased and when the father has lost all desire".[3] *Commentary*—The word '*Pratha*' means 'married'. 'After cohabitation has ceased' means 'after the physical power to cohabit is gone'. 'When the father has lost all desire' means 'when the father has given up worldly desires'. For 'after cohabitation has ceased', Prakása has two alternative readings, namely, 'after the wish to cohabit is gone' and 'after cohabitation has become impossible'; but these different readings as interpreted in the commentary do not in the result conflict with this reading. Halāyudha reads 'turned away from cohabitation'; but even according to that, the drift is the same.

Brihaspati says: "Partition among brothers after the death of their parents has been laid down. But partition may take place even while the parents are alive, when the mother has ceased to menstruate".[4]

Gautama says: "Let the sons divide the wealth after their father's death or when their mother has ceased to menstruate and their living father is willing".[5]

Sankha and Likhita say: "Or partition may take place while the father is alive, with his consent and openly or secretly according to law".[6] *Commentary*—'Consent' means 'the father's consent'. 'Openly' means 'in the presence of umpires'. 'Secretly' means 'without umpires'.

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[1] II. Cole. Dig., 258, XCIV.
[2] Brihaspati, XXV. 3, 12 and 13.
[3] Nárada, XIII. 3.
[4] Brihaspati, XXV. 1.
[5] Gautama, XXVIII. 1—3.
[6] II. Cole. Dig., 205, XXI.

Hárita says: While the father lives, the sons have no independent power in regard to receipt, disbursement and amercement of wealth. But if he be prodigal, absent abroad or afflicted with disease, let the eldest son look to the affairs (of the family)".[1] *Commentary*—'Receipt' means 'using the joint wealth independently of the father'. Párijáta says that the word means 'acquisition of wealth'. The word '*visarga*' means 'giving away'. '*Akshêpa*' means 'recovering money from the debtor'. The word '*Kámadáne*' means 'giving away wealth according to whims'. Prakásakára reads '*Kámamdine*' for '*Kámadáne*' and says that '*Kaman*' indicates the permission granted by the father near at hand and that the word '*dine*' means 'out of his mind'.

Sankha and Likhita say: "Should the father be incapable, let the eldest (son) manage the affairs of the family or, with his consent, his younger brother who knows the business. There can be no partition while the father does not wish it. If he be old, deranged in mind or afflicted with chronic disease, the eldest (son) alone should manage the family estate and protect the rest; for it is well-known that (the prosperity of a) family depends upon wealth. Men whose father is alive have no independence; likewise while their mother is alive".[2] *Commentary*—'*Anantara*' means 'subsequently born'. 'With his consent' means 'with the consent of the eldest son'. 'Deranged in mind' means 'out of his mind owing to disease proceeding from air, etc.' The management of the family depends on wealth. 'Have no independent power' means 'are incapable of making gifts, etc.' The meaning is that so long as a virtuous mother is alive, the sons have no independent power.

Here ends the chapter of Vivadaratnakara on 'Dayavibhaga'.

CHAPTER II.

Partition among sons whose father is alive.

On this point, Manu and Vishnu say: "Where the father recovers ancestral property given up as irrecoverable, he need not divide such property against his wish with his sons, being self-acquired".[3] *Commentary*—'Ancestral' means 'descended from father, etc.' 'Irrecoverable' means 'which the father was not able to recover'. He need not divide such property, if unwilling, with his son, because it is self-acquired.

Yájñavalkya says: "In land acquired by the grandfather, in corrody or chattel, the ownership of both father and son shall be the same".[4] *Commentary—Nibandha* means that which is fixed, *i.e.*, wealth obtainable from mines, &c. 'Ownership being the same'

[1] II. Cole. Dig., 199, VIII.
[2] *Ibid*, 203, XVII.
[3] Manu, IX. 209.
[4] Yájñavalkya, II. 121.

means that there shall be no greater share allowed to the father and no gift (of the property) at the father's choice.

Vyása says: "In house and land descended from ancestors the father and the son take equal shares. Sons are not entitled to partition in the father's property while the father is unwilling".[1]

Brihaspati says: "In property acquired by the paternal grandfather, moveable and immoveable alike, the right of the father and the son is well-known to be equal. In the paternal grandfather's property lost and subsequently recovered by the father with his own abilities and in property acquired by the father by his learning, valour, etc., the ownership according to the *Smritis* is with the father. He may, as he pleases, make a gift of that wealth or allow a partition of it. In the absence of these, his sons are declared to be entitled to share it equally".[2] *Commentary*—The word 'lost' means 'taken away by others'. The meaning is that property so lost which the paternal grandfather was not able to recover and which was subsequently recovered by the father by his own exertions and property acquired by learning, valour, etc., the father may dispose of, etc. On the right of the sons to make a partition, Nárada says: "(Let the sons divide) after the mother has ceased to menstruate and after the sisters have been married or after cohabitation has ceased and when the father has lost all desire".[3] *Commentary*—The word '*Pratha*' means 'married'. 'After cohabitation has ceased' means 'after the physical power to cohabit is gone'. 'When the father has lost all desire' means 'when the father has given up worldly desires'. For 'after cohabitation has ceased', Prakása has two alternative readings, namely, 'after the wish to cohabit is gone' and 'after cohabitation has become impossible'; but these different readings as interpreted in the commentary do not in the result conflict with this reading. Halāyudha reads 'turned away from cohabitation'; but even according to that, the drift is the same.

Brihaspati says: "Partition among brothers after the death of their parents has been laid down. But partition may take place even while the parents are alive, when the mother has ceased to menstruate".[4]

Gautama says: "Let the sons divide the wealth after their father's death or when their mother has ceased to menstruate and their living father is willing".[5]

Sankha and Likhita say: "Or partition may take place while the father is alive, with his consent and openly or secretly according to law".[6] *Commentary*—'Consent' means 'the father's consent'. 'Openly' means 'in the presence of umpires'. 'Secretly' means 'without umpires'.

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[1] II. Cole. Dig., 258, XCIV.
[2] Brihaspati, XXV. 3, 12 and 13.
[3] Nárada, XIII. 3.
[4] Brihaspati, XXV. 1.
[5] Gautama, XXVIII. 1—3.
[6] II. Cole. Dig., 205, XXI.

Baudhâyana says: "Partition (shall take place) with the father's consent".[1]

Next Hárita says: "A father may make a partition during his lifetime, go to the forest or enter into the order suitable for an aged man; or he may divide a small part of his property (among his sons) and remain (in his house) keeping the greater part of it. Should he lose his wealth, he may take the sons' shares back from them. He must also give a portion to his indigent sons".[2] *Commentary*—'Go to the forest' means 'enter into another order'. Prakásakára says that 'entering into an order suitable for an aged man' means 'to renounce all *karma* and live upon the wealth of the son'. Halâyudha and Párijáta, however, say that the order suitable for an aged man is the fourth order. According to them, 'going to the forest' means 'entering into the order of the *Vânaprastha*'. The particle '*vâ*' really indicates disinclination. That word shows that there is a mode of life other than going to the forest or entering into the order suitable for an aged man. 'Divide a small portion, etc.', must be understood to apply to persons who wish to remain in the householder's order even after becoming true sanyasins. The word '*Upadasyêt*' means 'grow poor'.

On this point, Nárada says: "Or the father who has become old may of his own free will make a division between his sons, either giving to the eldest son the largest share or in any other mode, according to his wish".[3] *Commentary*.—The word '*va*' denotes an alternative. The meaning is that the father or the sons may divide. 'Become old' means 'rendered incapable more than previously'. Therefore alone Gautama in the text beginning with 'the son born after partition, etc.', says that partition should be made where a son is born after partition. The word '*jyeshta*' means 'most excellent'. 'According to his wish' means 'in equal or unequal shares as he pleases'.

Vishṇu says: "If the father should make a partition among his sons, he has absolute power over wealth acquired by himself".[4] *Commentary*—This applies to property acquired without the aid of the father's wealth.

Yájñavalkya says: "If the father should make a partition, let him separate his sons at his pleasure. He may give the eldest son the best share or let all the sons share equally".[5] *Commentary*—This text also refers to self-acquired property of the father; for in property acquired by ancestors, the father and the son are said to be entitled to share equally.

In this connection, the same author lays down a special provision where the partition is equal. "If he made the shares equal, his wives to whom no separate property has been given by the

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[1] Baudhâyana, II. 2, 3 and 8.
[2] II. Cole. Dig., 205, XXIII.
[3] Nárada, XIII. 4.
[4] Vishṇu, XVII. 1.
[5] Yájñavalkya, II. 114.

husband or the father-in-law must be rendered partakers of like portions".[1] *Commentary*—If the father gives his sons equal shares, then his wives should also be made to get equal shares. Therefore, where the shares of the sons are unequal, it must be understood that the wives also take unequal shares. The wives are not the wives of the sons, the term 'wife' being co-related to the person making the partition, *i.e.*, the father. The meaning of the latter part is that where any of the wives have not been given any property by the husband or the father-in-law, she or they must be made equally rich with the rest. Halāyudha holds that this applies even in the case of wives having no issue. Prakása says that where any *stridhanam* has been given, she takes only a half (of what she would otherwise get).

Nárada says: "Let the father making a partition reserve two shares for himself".[2] *Commentary*—'*Pratipadyeta*' means 'obtain'. '*Vibhajan*' means 'making a partition'.

Brihaspati says: "The father may take two shares for himself at a partition made during his lifetime".[3] *Commentary*—This text in the light of the text of Sankha applies where the father has an only son. Sankha and Likhita on the rights of the father say: "If the father has an only son, he may take two shares for himself and a larger share of bipeds and quadrupeds".[4] *Commentary*—It means that the father may take a larger number of these and two shares also. Accordingly it is said: "The bullock should be given to the eldest, and the house, except where the father resides, to the youngest".[5] *Commentary*—The following is the drift. Where the father has many sons and the eldest and the youngest are possessed of good qualities, the bullock should be given to the eldest and the house to the youngest *even against the wishes of the father*: for otherwise the rule would serve no purpose. As regards the text of Yájñavalkya, which says: "Or let all the sons take equal shares". Halayudha observes that that does not conflict with the text under consideration, that text being intended to lay down simply that where all the sons are equally worthy, they may at the father's option be given equal or unequal shares at the partition. Párijáta says that an only son is the eldest son. Bhashyakara omits the word '*putra*' (son) and reads 'if the father be alone' which he explains as meaning that even if he has no wife living, the father gets two shares, and if his wife is living he should gladden her by giving her another share. Of bipeds and quadrupeds let him take one more than his two shares. This rule of inequality applies where the eldest and the youngest are possessed of good qualities and it has effect even though the father be unwilling, for otherwise the rule will become inoperative. The equality of shares spoken of by Yájñavalkya applies where all the sons are possessed of good qualities. In the absence of any excellence, the sons share

[1] Yájñavalkya, II. 115.
[2] Nárada, XIII. 12.
[3] Brihaspati, XXV. 5.
[4] II. Cole. Dig., 216, XLIV
[5] II. Cole. Dig., 216, XLIII.

equally or unequally according to the father's choice. The word '*anyatra*' means 'excluding the house where the father resides'.

Baudháyana says: "Let him make a partition among his sons; the shares of all shall be equal, it being without distinction laid down in the *Srutis*. Let the eldest take one most excellent chattel, as the *Srutis* declare. 'It is necessary to gratify the eldest son with wealth'. He shall take one out of every ten, and all shall share the rest equally".[1] *Commentary*.—Of all the things available for partition the eldest son shall take one most excellent. The author supports this view by quoting the *Sruti* 'it is necessary, etc'. The word '*dhana*' is defined as 'deduction'. '*Niravasayanti*' means 'separate him from the other sons'. Another alternative is that the eldest may take one out of every ten cows, etc., of equal class even despite the father's wish. This alternative depends upon the degree of excellence which the eldest son possesses.

Apastamba says: "Having gratified the eldest son with one chattel, let the father in his lifetime distribute the wealth among his sons in equal shares, excluding the impotent, the mad and the degraded".[2] *Commentary*—This refers to the father who though alive has become incapable of procreating; one chattel, means one most excellent horse, etc. The impotent, etc., are intended to include all who are not entitled to inherit.

Here Manu says: "Where undivided brothers have combined their efforts, the father shall under no circumstances make unequal partition among them".[3] *Commentary*—The 'effort' here meant is the endeavour conducive to the acquisition of wealth.

Nárada, Brihaspati and Yájñavalkya say: "Sons to whom equal, less or greater shares have been allotted by the father shall respect such a distribution; otherwise they shall be chastised".[4]

Nárada says: "For such as have been separated by their father with equal, greater or less allotments of wealth, such distribution shall be the legal one; for the father is the lord of all".[5] *Commentary*—There is no conflict between the previous text and this, as that forbids unequal partition among brothers of property acquired by them by their joint exertions and this allows of unequal partition of the ancestral property.

Here ends the chapter of Vivadaratnakara on 'Partition among sons during the father's lifetime'.

CHAPTER III.

PARTITION AMONG SONS WHOSE FATHER IS DEAD.

On this subject Manu says: "The portion deducted for the eldest is the twentieth part of the whole wealth, together with the

[1] Baudháyana, II. 2, 3-3-1.
[2] Apastamba, II. 6, 13—13 and II. 6, 14—1.
[3] Manu, IX. 205.
[4] Brihaspati, XXV. 4.
[5] Nárada, XIII. 45.

best of all chattels; for the middlemost, half of that; and for the youngest, a quarter of that. The eldest and the youngest shall take as indicated and others than the eldest and the youngest shall take the best of all items of wealth and shall take any one thing superior in kind and the best of every ten".[1] *Commentary*—This deduction obtains in the case of the eldest possessed of good qualities, etc. The following is the settled rule on this point:—Where there are many sons of the same mother all possessed of good qualities, but less and less good according to their order, then a twentieth share of the common wealth should be deducted in favour of the eldest and he should also be given the best of all the chattels. Half of that, *i.e.*, a fortieth share (should be deducted) in favour of the middlemost, who should also be given a middling chattel. Similarly, a fourth, *i.e.*, one-eightieth of the whole wealth should be deducted in favour of the youngest, and he should be given also the least precious of the chattels. Where, however, the eldest and the youngest alone are possessed of good qualities, they should be allowed a deduction as laid down and the brothers intermediate who are not possessed of good qualities should get (only) the middling chattel and the deduction allowed in the case of the middlemost, *i.e.*, a fortieth share, should be equally divided and distributed. Where there are many between the eldest and the youngest eminently possessed of good qualities, the deduction of a fortieth share should be allowed and given to every one of them. If the eldest is eminently possessed of good qualities and the rest of none at all, then the most excellent of all the chattels, that which is superior in kind to the rest, such as *padmaraga* (a ruby) and the best one out of every ten of all cows, buffaloes, etc., shall be taken by the eldest.

Gautama thus lays down a distinction to be observed where the eldest is surpassingly good and the rest of middling quality. "To the eldest, a twentieth share, a pair, a cart drawn by animals having teeth in both jaws and an excellent bull; cattle, old, hornless, one-eyed and tailless, to the middlemost if there be many of them; sheep, grain, iron, a house, a cart with bullocks and one of every class of quadrupeds to the youngest; all the rest should be divided equally".[2] *Commentary*—A twentieth share means a twentieth of the whole paternal wealth. 'A pair' means 'a pair of cows'. 'Animals having teeth in both jaws' are horses, asses, etc., a cart drawn by two animals of the same class from among these animals and an excellent bullock, *i.e.*, one capable of impregnating, these are the deductions, where available, in favour of the eldest. '*Khora*' means 'wool'. '*Kuta*' means 'having no horns'. '*Vanda*' means 'having no tail'. This is the ox well-known as '*Vende*'. This is the deduction in favour of the middlemost. The same rule applies where there are many of them. '*Avih*' means 'a sheep'. '*Dhanya*' means 'grain'. '*Ayas*' means 'iron'. As these are mentioned together, something of each must be given accord-

[1] Manu, IX. 112—114.

[2] Gautama, XXVIII. 35.

ingly. '*Anaha*' means 'cart', '*Yuktam*' means 'to which bullocks are yoked'. One of every class of quadrupeds, such as cows, etc. This is the deduction in favour of the youngest. Similarly where in the mattter of deduction, a greater and a less are declared, the determination depends on the extent to which the brothers are possessed of good qualities. In the world, however, the eldest alone is respected and without allowing the deduction in favour of the middlemost and the youngest brothers, a twentieth share is deducted in favour of the eldest alone as we see.

Hárita says: "Where a herd of cattle is partitioned, one excellent bullock should be given to the eldest as also the idol in the house. If the rest leave and make (houses) for themselves, the best should be given to the eldest and the rest shall take according to their order".[1] *Commentary*—'*Ekadhana*' means 'one most excellent chattel'. '*Devata*' means 'image of Vishṇu, etc.'. The house is the ancestral house. '*Kuryuh*' means 'build other houses', 'other houses' being understood. Where the other sons have to leave the ancestral house and build other houses, then the best house should go to the eldest. '*Anupúrvyam*' means 'order of age'. Therefore, the middlemost gets a middling house and the youngest one smaller than that. Harihara, however, interprets '*Devatágriha*' to mean 'the dome set apart for the worship of *Durga* and other deities' and says that that should be given to the eldest while other sons should build one for themselves.

Apastamba says: "In some countries, gold, black cows, black produce of the land and the vessels of the father are all given to the eldest".[2] *Commentary*—'Black produce of the earth', *i.e.*, gingelly seeds, black gram, etc. '*Paribhanda*' means 'vessels used for purposes of eating, etc.'.

Baudháyana says: "In the absence of the father and in the four castes, cows, horses, goats and sheep, in the order of their mention, are the share of the eldest".[3] *Commentary*—This rule applies where the eldest brother excels others in good qualities.

Devala says: "The middling share should be given to sons who are equal. To the eldest who keeps in the path of virtue, a tenth share should be given".[4] *Commentary*—'The middling share' means 'the middling deduction, *i.e.*, one-twentieth share'. Halāyudha and Párijáta say that this rule applies where the eldest is learned in the Vedas and where the others are not possessed of good qualities. Others hold that, according to the first half of the text where the eldest performed *agnihotra* and is learned in the Vedas and the other brothers are possessed of good qualities, the eldest should be given a tenth share and the other sons should each get the middling share, *i.e.*, a twentieth share. Where the eldest performs *agnihotra* and is learned in the Vedas and the other brothers are not possessed of good qualities, then the eldest

[1] II. Cole. Dig., 218, XLVI.
[2] Ápastamba, II. 6, 14—7.
[3] Baudháyana, II. 2, 3—9.
[4] II. Cole. Dig., 215, X. I.

should get a tenth share, and every one of the brothers having no good qualities should, as previously stated, get a separate allotment of a fortieth share. This is the meaning of the second hemistich.

Here ends the chapter of Vivadaratnakara on 'Partition among sons after the father's death'.

CHAPTER IV.

PARTITION AMONG SONS OF THE SAME FATHER BY DIFFERENT MOTHERS.

On this subject, Manu says: "If there be a doubt as to how the division should be made in the case where the younger son is born of the senior wife and the elder son of the junior wife, there the son of the senior wife shall take as his additional share one bull, and the next best bulls shall form the portion of those who are inferior on account of their mothers".[1] *Commentary.*—The doubt herein expressed arises only in the case where the other sons are born of mothers equal in class with the son of the senior wife, as the mode of partition among brothers of different castes will be dealt with later on. The word *'Púrvaja'* denotes the son, though younger born, of the wife first married. The meaning of the first portion of the last verse is, "all bulls next best to the one most excellent bull given to the younger son by the first wife". *'Inferior'* means 'born of mothers married after his own mother'. Having thus explained seniority with reference te the mothers, the author points out a further distinction in the same case. "But the eldest son born of the eldest wife shall take as his additional share sixteen with the bull and then the other sons may take shares according to the seniority of their mothers. This is the established rule."[2] *Commentary*—The word *'Vrishabha Shodasah'* means 'cows whose number makes sixteen with the one bull'. This deduction indicates the extreme equality in caste of this son. The rest owing to their mothers being juniors take each one bull next best. Prakásakára says that Manu is here stating the views of others as he has already declared his own view that seniority of sons depends upon the order of their births and not on the seniority of their mothers. Halāyudha, however, interprets these texts of Manu as follows:—"Where the younger son is born of the senior wife and the elder of the junior wife, there the elder son born of the junior wife shall take as his additional share one most excellent bull. The other bulls which are inferior to this shall be taken by the elder sons born of senior wives, one each according to the relative inferiority of their mothers. The rest shall be divided equally". But where the eldest son is born of the senior wife, there Manu points out a special distinction in verse 124. "He shall take fifteen cows and one bull as his additional share. The other sons shall,

[1] Manu, IX. 122 and 123.

[2] Manu, IX, 124.

according to the rank of their mothers, each take, as previously mentioned, one bull".

On this point, Gautama says: "The additional share of the eldest is one bull; but if born of the first wife, he shall take fifteen cows and one bull, or let the eldest son share equally with the younger born of the first wife".[1] *Commentary*—The term '*eldest*' means 'the elder son of the junior wife according to Manu'. The word *Jyeshtinéyah* means the eldest son born of the senior wife. The word *Samadhá* means 'equally'. This rule applies where all the sons are of equal class.

Sankha and Likhita say: "One bull to the eldest as his additional share and the house to the younger".[2] *Commentary*—Here also the word '*eldest*' means the elder son born of the junior wife according to Manu.

Gautama says: "Let the special shares be adjusted among each class of sons according to their mothers".[3] *Commentary*—The meaning of this is as follows: Where there are several wives of the same class and where each has several sons equal in number, then, as this special rule of division is not easily workable, the estate should be divided according to the mothers and the special rule of deduction of one-twentieth share, etc., should be applied among sons by the same mother.

Brihaspati says: "Where there are many sons sprung from the same father, born of different mothers, equal in caste and number, division should be legally made into shares according to the mothers; but where equal in caste but varying in number, then the division should be according to males".[4]

Vishnu says: "Sons who are equal in caste shall take equal shares. The best part shall be given to the eldest as his additional share".[5] *Commentary*—This rule applies where the number of sons by different mothers varies.

Manu says: "But there is not this deduction of the one out of ten among brothers equally zealous in their duties; some trifle only need be given to the eldest just to promote the feeling of respect".[6] *Commentary*—The meaning of this text is this:—When the brothers are equally skilled in the recitation of the Vedas, etc., the deduction of one best among ten should not be allowed. This deduction of one best among ten is here used as an indicative illustration. All kinds of deductions are hereby countermanded, because it is said 'some trifle need only be given'. However, something to show respect for the mere fact of the seniority of birth should be given. But where there is a difference between the sons in respect of the possession of good qualities also, Manu states

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[1] Gautama, XXVIII. 14, 15 and 16.
[2] II. Cole. Dig., 216, XLIII.
[3] *Ibid*, 17, XXVIII.
[4] Brihaspati, XXV. 15 and 16.
[5] Vishnu, XVIII. 36 and 37.
[6] Manu, IX. 115.

the opinion of others in his verses already cited and not concurring in their view, he enunciates his own view in the verse 'among brothers born of wives of equal class, etc.'. As otherwise there would be a contradiction, the other rule has been overruled. As the special rule applies where there is a difference in good qualities and behaviour, it is only fair that the other view should be overruled when his own view has to be enunciated as the conclusive one. Lakshmídhara holds that the younger son born of the senior wife is alone entitled to the deduction on account of seniority, and Párijáta also concurs in this view. Manu says: "Even in Swabrahmanyâs, invocation is made according to seniority of birth. Seniority among twins conceived at the same time is also considered to depend on seniority of actual birth".[1] *Commentary*—Swabrahmanyâs is the name of a particular mantra recited by Chandogyas during Jyotishthoma sacrifice. The plural number is used, because it is often repeated. There the father is invoked as the father of his eldest son; *e.g.*, "the father of Amuka, the grandfather of Amuka is performing the sacrifice". The Natasutra says that seniority by birth is thereby indicated as also from the text 'the eldest of such of the male and female issue as are alive'.

Devala says: "Seniority is determined among brothers beyond the pale of castes by behaviour, and among twins, by priority of actual birth. Of brothers born twins, he whose face is first seen by the parents is established to be the elder".[2]

Manu says: "The eldest brother who out of avarice deceives his younger brothers, ceases to be the eldest. He shall have no share and shall be chastised by kings".[3] *Commentary*—The word '*vinikurvíta*' means 'should deceive'. 'Ceases to be the eldest' means 'becomes unworthy of being respected like the eldest'.

Accordingly, Manu says: "Where these deductions are made, the shares should be made equal; but if no such deductions are made, the allotment of shares shall be made in the following manner:—The eldest shall take one share in excess, the next younger shall take a share and a half, the rest one share each. Thus has the law been settled".[4] *Commentary*—'One share in excess' means 'two shares'. The next younger shall take a share and half a share more. The rest shall take each a share. This rule applies where division is made without making a deduction. This rule again applies only where the eldest brother and the next younger to him are possessed of excellent qualities and learning and the rest have no good qualities, agreeably to the text of Brihaspati regarding the eldest son. "The brother eldest by birth, good qualities and learning shall take two shares of the heritage", and as the same reasoning applies to the one next younger to him, it must be understood that the deduction of a twentieth share, etc., obtains where all the brothers possess good qualities and good behaviour;

[1] Manu, IX. 126.
[2] II. Cole. Dig., 231, LXV.
[3] Manu, IX. 213.
[4] *Ibid*, 116 and 117.

but where there is some difference of degree in the possession of these, Gautama says: "Or let the eldest have two shares and the rest one each".[1] *Commentary*—This rule applies where the eldest alone excels in good qualities and the rest are devoid of any. Accordingly, Gautama says: "Or let them each take one kind of property, (selecting) according to seniority what they wish for; ten head of cattle".[2] *Commentary*—The meaning is that they shall take ten cattle each of the same class, in the order of seniority.

Gautama adds; "But none shall take ten one-hoofed beasts or slaves".[3] *Commentary*—The meaning is that none shall take ten of one-hoofed animals like horses, or of bipeds such as slaves, etc. This rule applies where all are equal and there are many animals to divide.

Vasishṭha says: "Now, partition of the estate among brothers. Let the eldest take a double share and one out of ten kine and horses. The goats and the house belong to the youngest; black iron, utensils and furniture to the middlemost".[4] *Commentary*—The meaning is, the eldest shall take two shares and one most excellent of every 10 cows and horses. This text of Vasishṭha applies where the eldest excels in good qualities and the other two are also possessed of good qualities.

Nárada says: "A larger share shall be given to the eldest son and a smaller to the youngest; the rest shall take equal shares, and so an unmarried sister. This rule also applies to *Kshetraja* sons lawfully begotten upon the wife".[5] *Commentary*—Prakásakára, however, reads 'a large share to the best' instead 'of a smaller to the youngest' occurring in this verse. He comments upon his own reading and says that the first-born son takes two shares and the best, *i.e.*, the son who is engaged in the management of domestic concerns should be given something excellent. 'And so an unmarried sister' means that she shall also be entitled to a share. This is the mode of division among *aurasa* sons. The mode of division among *Kshetrajas* will be next explained. The mode of division pointed out among *aurasa* sons will also apply in the case of *Kshetrajas* where these *Kshetrajas* are lawfully begotten, *i.e.*, where they are begotten upon the soil lent by the impotent, etc., to his *Sakulya* or one of his own caste. Even among such *Kshetrajas* the larger share allowed to the eldest should be given. It may be asked how there can be many Kshetraja sons of one man. The answer is, that the text applies to Kshetraja sons born twins.

As to the qualifications of the eldest son who is entitled to a larger share, Brihaspti says: "He who is the first by birth, learning and good qualities shall take two shares of the heritage; the rest share equally; for to them he is equal to a father".[6]

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[1] Gautama, XXVIII. 9 and 10.
[2] *Ibid*, 11 and 12.
[3] *Ibid*, 13.
[4] Vasishṭha, XVII. 40, 42, 43, 44 and 45.
[5] Nárada, XIII. 13 and 14.
[6] Brihaspati, XXV. 9.

Usanah says: "The mode of division among *anuloma* castes has been declared. But the mode of division among brothers alike born of the same father will be pointed out".[1] *Commentary*—Namely, among all sons equally devoid of good qualities; thus even where one is possessed of good qualities, if all acquire different kinds of property, then they shall divide equally. This is the meaning.

Yájñavalkya says: "Let the sons divide equally the wealth and the debts of their father after his death".[2] Also "But where the common wealth is improved by the efforts of one of the brothers, the law is that division should be equal; but among sons of different brothers the allotment of shares is according to the fathers".[3] *Commentary*—The first portion is an exception to the rule of Vasishṭha that he who acquires property shall take two shares. When common property is considerably improved by one of the brothers by good husbandry, etc., then that property shall be equally divided and the person who improves shall not take two shares. This is the meaning. The rule of Vasishṭha should be understood to apply to cases other than this. Where the property of the grandfather has to be divided among sons of different brothers, whether equal or unequal in number, they (together) take the share which their father would have taken. But each should not take a share.

On the same subject, Brihaspati says: "Whatever has been jointly acquired by all, they shall divide equally. Their sons, whether equal or unequal in number, are declared entitled to the shares of their fathers".[4] *Commentary*—Sons unequal or equal in number whose fathers had not divided, are here meant.

Kátyáyana says: "Where the son dies undivided, his son that had received no means of livelihood from the grandfather should be made his heir. He shall receive his father's share from his paternal uncle or the son of the latter. The same share shall legally belong to all the brothers; or even his son shall receive it. It shall not lapse".[5] *Commentary*—Where among brothers one dies, then the share of his son shall not lapse.

Devala says: "Among co-parceners living together undivided or divided, there shall be a subsequent division of heritage extending to the fourth degree. This is settled".[6] *Commentary*—The meaning is this:—Among co-parceners, whether undivided or reunited after division, the subsequent partition extends only to the brothers, their sons and the sons of these. To the sons of the last mentioned the partition does not extend.

The same author says: "Men of the same *gotra* are *sapiṇḍas* only to that extent. After them there is a difference of *pinda*. Sages intend that partition of heritable property should be

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[1] II. Colc. Dig., 234, LXXII.
[2] Yájñavalkya, II. 117.
[3] *Ibid*, 120.
[4] Brihaspati, XXV. 14.
[5] II. Colc. Dig., 241, LXXIX.
[6] *Ibid*, 242, LXXXI.

co-extensive with *sapiṇḍa* relationship".[1] *Commentary*—This applies also to the property of which one wishes for a partition when it is not enjoyed by him but is enjoyed by another living in the country in which the property is situate.

Vasishṭha says: "Now, partition of estate among brothers. It shall be delayed till childless women bear sons".[2] *Commentary*—'Women' here means 'wives of brothers'. If they are supposed to be pregnant, shares should be given them also. If no son is born, brothers alone shall divide and the women should only be maintained.

Vishṇu says: "Mothers shall take shares proportionate to their sons' shares and so shall unmarried daughters".[3] *Commentary*—From the use of the plural 'mothers', as every one is a mother, and as there is no warrant for understanding it in the singular number, all mothers are entitled. Or it may mean that shares are reduced according to the descending order of the castes of their mothers agreeably to the text that mothers take shares proportionate to those of their sons. Where there is only one mother the whole text is easily understood. So says Grihésvara also.

Yájñavalkya says: "Of brothers who divide after their father's death, even the mother takes an equal share".[4]

Brihaspati says: "In default of him (the father), the mother takes a share equal to that of a son. Their mothers take equal shares and a maiden takes a fourth share".[5] *Commentary*—The word 'mother' first used, means 'the mother of living sons'. The word 'mothers' means 'wives of the father having no issue'. 'A fourth share' means 'a fourth of the share which a son of that class would be entitled to'. This must be given for the performance of sacraments. As for the text of Vishṇu that the mothers take shares proportional to the shares of their sons, as also unmarried daughters, that rule also in the light of this text must be understood as allowing this one-fourth share, as this text also is intended to refer to unmarried daughters.

Vyása says: "All the sonless wives of the father are also declared entitled to take equal shares, and all paternal grandmothers are declared equal to mothers."[6]

Brihaspati says: "All sons shall share alike their father's wealth. But he who possesses learning and virtue deserves a larger share than the rest. Fathers are fathers by virtue of that son whose fame for learning, discernment, valour, knowledge, liberality and virtue fills the world".[7]

Nárada says: "He who, zealous about domestic concerns, looks after them shall be supported by his brothers, with food, raiment

[1] II. Cole. Dig., 243, LXXXII.
[2] Vasishṭha, XVII. 40 and 41.
[3] Vishṇu, XVIII. 34 and 35.
[4] Yájñavalkya, II. 123.
[5] Brihaspati, XXV. 64.
[6] II. Cole. Dig., 243, LXXXIV.
[7] Brihaspati, XXV. 10 and 11.

and vehicles'.[1] *Commentary*—Halāyudha comments upon this text as meaning that where one of the brothers, owing to his own ability, does not take a share, partition should be made after giving him some trifle in order that his sons may not subsequently dispute; and in support of his construction of this text quotes by way of introduction the passage of Manu which says: "Where of brothers, one being able in his occupation does not wish for a share, he must be given some little portion for livelihood and separated from them".[2] Prakásakára on the other hand interprets the passage thus:—Where brothers living jointly and having paternal wealth earn more by their own husbandry, and where one of them earns nothing, he should not be given the increase proportionate to his share of the paternal wealth employed by them in trade; but there is no prohibition against his being given his share of the capital. Even then there shall not be a regular partition. He must be given something for his livelihood. After reserving to themselves a share for their own trouble, the residue alone shall be given him.

As a limitation to the alternatives propounded in the rule: "Let the eldest take a larger share, or let all the brothers share equally", Yájñavalkya says: "One able and not wishing for a share shall be given some trifle and separated".[3] *Commentary*—Here also Prakásakára says: "Something though trifling should be given him and he should be separated in order that his sons may not afterwards quarrel about it".

Thus ends the chapter on "Partition among brothers by different mothers."

CHAPTER V.

On persons excluded from inheritance.

On this subject, Âpastamba says: "All virtuous sons inherit. But let him be made portionless, though the eldest son, who spends money unrighteously".[5] *Commentary*—'Spends' here means 'wastes'. 'Unrighteously' means 'in gambling and like pursuits inconsistent with the order of his life'. 'Portionless' means 'deprived of his share to the extent of money wasted by him'. Some say that he should altogether be disinherited.

Gautama says: "Even the son born of a wife of equal caste, if addicted to vice, gets no share".[2] *Commentary*—The word 'even' shows that the rule applies with greater force to sons born of wives of different castes. So says Achárya. Prakásakára says that this text lays down an alternative in view to the fact that sons though so addicted to vice can be reclaimed from sinful ways.

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[1] Nárada, XIII. 35.
[2] Manu, IX. 207.
[3] Yájñavalkya, II. 116.
[4] Apastamba, P. II., P. 6, K. 14, 14 and 15.
[5] Gautama, XXVIII. 40.

On this subject, Manu says: "All brothers who are addicted to doing forbidden acts are unworthy of property".[1] *Commentary*—'To doing forbidden acts' means 'to gambling and the like'. Others say that this expression means 'to committing waste upon family property'.

Sankha and Likhita say: "He who has been formally degraded loses his rights to inherit and to offer oblations of food and libations of water".[2] *Commentary*—'Formally degraded' means 'expelled from caste after breaking the pot by relatives for treason and other heinous offences.

Brihaspati says: "Though born of a wife of the same caste, a son devoid of good qualities does not deserve the paternal wealth. It is said to go to those learned men who offer rice-balls to him. A son is he who redeems his father from debts superior and inferior. Therefore, there is no good having a son who is not of that description. What end can be served by a cow which yields no milk and is not pregnant? What purpose is served by a son who is neither learned nor virtuous? A son who is devoid of learning, valour, wealth, devotion, knowledge and virtuous conduct is equal to urine and excrements".[3] *Commentary*—'Devoid of good qualities' is explained by the author himself in the succeeding portion. The expression 'Tatpindadah' means 'those who give the son devoid of good qualities, food and raiment'.

Manu says: "Eunuchs and outcasts are not entitled to share; so also persons born blind or deaf, the insane, the idiot and the dumb as well as those who are wanting in one organ. But it is just that even to these food and raiment should be given without stint by the intelligent. Those that refuse to give will become degraded. If the eunuch and the rest somehow desire to marry, the offspring of such wives deserves a share".[4] *Commentary*—The term 'Jatyandha' denotes the incurability of the blindness and not its existence from birth. 'Idiot' means 'one who could not discern between himself and others'. By the term 'Nirindriya' are included the lame and the like who are incompetent to perform the duties enjoined by the Srutis and the Smritis. 'All these' means 'the impotent and the rest'. 'Without stint' means 'for life'. The term '*klibáthínám*' means 'persons enumerated in the text, *klíba* excluded'; for an impotent man is incapable of procreating. Prakásakára, however, holds the opposite view. He says that the term *klíba* means 'a person suffering from impotency due to causes which may subsequently be counteracted'. The word '*tantu*' means 'offspring'.

Yájñavalkya says: "The outcast, his son, the impotent, the lame, the insane, the idiot, the blind and others, such as persons suffering from incurable disease, take no shares but are entitled to

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[1] Manu, IX. 214.
[2] II. Cole. Dig, 423, CCCXVIII.
[3] Brihaspati, XXV. 42—45.
[4] Manu, IX. 201—203.

be maintained".[1] *Commentary*—'His son' means 'the son born after he became an outcast'. 'Idiot is one whose mind is vacant'. 'Incurable diseases', such as leprosy, etc., for which there is no remedy. The word '*Adi*' includes all persons enumerated by other sages as entitled to no shares but only to maintenance.

Suspecting that the exclusion from inheritance of the impotent and the like may be argued to extend even to their sons, Yájñavalkya says: "The *aurasa* and the *kshetraja* sons of these, if themselves free from blame, share in the inheritance, and the daughters of these should be maintained so long as they are not provided with husbands".[2] The same author propounds the following rule with respect to the wives of the impotent, etc.:—"The sonless wives of these, if virtuous, should be maintained. But such of them as are unchaste or adverse to their husbands should be driven out".[3] *Commentary*—The term 'adverse' contemplates the doing of such acts as administering poison and not the sowing of family dissensions.

Nárada says: "One hostile to his father, degraded, impotent or expelled from caste for heinous offences, shall not share in the inheritance, even if he be an *aurasa* son. How could he, if he were only a *Kshetraja*? Persons suffering from chronic or acute complaints, the idiot, the insane, the blind and the lame need only be maintained at the expense of the family; but their sons take their shares".[4] *Commentary*—He who hates his father is the enemy of his father. Such hatred terminates in compassing the death of the father who is alive and in refusing to offer for the benefit of his soul libations of water, etc., when he is dead. 'One expelled from caste for heinous offences' means 'one who having been found guilty of regicide, etc., has been outcasted, the ceremony of breaking the pot having been performed'. Prakásakára, however, reads 'upapátaki' which means 'one guilty of minor offences'. 'Chronic diseases,' such as consumption, etc. 'Acute diseases', such as leprosy, etc. 'The family' means 'brothers, etc.'.

Devala says: "When the father is dead, the impotent, the leper, the insane, the idiot, the blind, the outcast, his offspring and the heretic do not share in the inheritance. To these with the exception of the outcast, food and raiment should be given. Their sons if free from blame themselves shall take their fathers' shares".[5] *Commentary*—'When the father is dead' means 'even though the father be dead'. The term '*Lingi*' (heretic) means 'one who greatly pretends to observe vows'.

Vishṇu says: "Outcasts, eunuchs, persons afflicted with incurable diseases or deficient in organs do not receive shares. They should be maintained by those who take the inheritance. Their *aurasa* sons take shares, but not the sons of outcasts".[6]

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[1] Yájñavalkya, II. 140.
[2] *Ibid*, 141.
[3] *Ibid*, 142.
[4] Nárada, XIII. 21 and 22.
[5] II. Cole. Dig., 426, CCCXXI.
[6] Vishṇu, XV. 32, 33, 34 and 35.

Commentary—The sons of the outcast born after the commission of the offence which entailed such degradation or begotten upon women of superior castes do not receive a share, not even in the wealth of their grandfathers. '*Riktagrahinah*' means 'of him who takes the share'.

Baudháyana says: "Those who are unable to manage their own business should be supported by giving food and raiment, such as the blind, the idiot, one immersed in vice, the diseased and those who have no duties to perform; but not the outcast or his offspring".[1] *Commentary*—'Those who have no duties to perform' means 'those who are not entitled to perform acts of virtue, sacrifice, etc.'; for it is declared, "Wealth is created for sacrifice. Therefore it must be given to persons who are competent to perform virtuous acts and not to women, fools or vicious men". As all intercourse with the outcast and his offspring is prohibited, even maintenance shall be refused them.

Vasishṭha says: "And those who have entered a different order do not share in the inheritance".[2] *Commentary*—'A different order' means 'any order other than that of a *grihasta* or a householder'.

Gautama says: "The idiot and the eunuch should however be supported; the male issue of an idiot deserves a share. Sons begotten on women of higher castes by men of lower castes should be regarded as sons of a Bráhmin by a Súdra wife".[3] *Commentary*—The word 'deserves' indicates that the son of the idiot will receive a share if he is entitled to it in his own right and not because of his being the son of the idiot. By the expression 'like the son by a Súdra wife' it is meant that the sons of a *Pratiloma* connection if doing service to the father should be maintained like the son of a Bráhmin by a Súdra wife.

Kátyáyana says: "The paternal wealth will not go to the son of a woman improperly married or born of a woman of the same *gotra* or to one who having entered the religious order reverts to the householder's. The son of the woman married improperly if he be of the same caste with the father and the son of a wife of a different caste but properly married take the inheritance. The son of a woman begotten by a husband of inferior caste is not entitled to inherit. Food and raiment without stint should, it is considered, be given him by his relatives. In default of them, he may inherit the paternal wealth. But his relatives shall not be compelled to give him any wealth which is not his father's".[4] *Commentary*—'The son of a woman improperly married' means 'son of a woman not of the same caste with the husband and married in violation of the rules enjoined by the shasters with regard to the marriage of maidens of different castes'; for this very author in the next portion of the passage lays down that the

[1] Baudháyana, II. 2, 3, 37—40.
[2] Vasishṭha, XVII. 52.
[3] Gautama, XXVIII. 43—45.
[4] II. Cole. Dig., 439, CCCXXXVII.

son born of a wife of the same caste though improperly married is heir to the paternal wealth. 'Woman of the same *gótra*' means 'woman of the same *gótra* married'. If the son of the woman improperly married be of the same caste with the father, then he is certainly heir. Similarly the son born of a wife of a different caste but properly married is also heir. But the son of a woman begotten upon her by a husband of inferior caste is no heir. It is to this son alone that food and raiment should be given. If there be relatives, then they should give him food and raiment without stint. In the absence of relatives, he may himself take that wealth. But where his relatives had inherited wealth which was not his father's, then they should not be compelled to give him even food and raiment.

Brihaspati says: "The younger brothers whose initiatory ceremonies have not been performed shall be initiated by their elder brothers out of the common paternal wealth".[1] *Commentary*—The form '*Yaviyasah*' is an *Arsha* substitute according to some for '*Yaviyamsah*'. Others hold that it is the genitive case of '*Yaviyan*'. In the result, the two views do not lead to any difference.

Vyása says: "The uninitiated among them should be initiated by their elder brothers out of their paternal wealth, as also the unmarried daughters in due form".[2] *Commentary*—The initiation of the unmarried is their marriage.

Nárada says: "The initiatory ceremonies of brothers whose initiatory ceremonies had not been duly performed by their father should be performed by their brothers out of their paternal property. Or if there be no paternal wealth, the initiatory ceremonies must invariably be performed by contributions from the shares of brothers whose initiatory ceremonies had been performed".[3] *Commentary*—The initiatory ceremonies here contemplated are those from *Játakarma* to *Upanayana* inclusive.

Devala says: "Nuptial portions should be given to unmarried daughters out of the paternal wealth. The daughter virtuously begotten inherits like the son the wealth of the sonless deceased."[4]

Yājñavalkya says: "Brothers whose initiatory ceremonies had not been performed should be initiated by others already initiated; and the unmarried sisters also by giving a fourth part of their brothers' shares".[5]

Vishṇu says: "He should marry unmarried sisters in a manner suitable to his wealth".[6]

Manu says: "Let the brothers give to unmarried sisters portions out of their own respective allotments, each a fourth of his own share. Those who refuse to give shall be degraded".[7]

[1] Brihaspati, XXV. 21.
[2] II. Cole. Dig., 297, CXXV.
[3] Nárada, XIII. 33 and 34.
[4] II. Cole. Dig, 296, CXXIV.
[5] Yájñavalkya, II. 124.
[6] Vishṇu, XV. 31.
[7] Manu, IX. 118.

Commentary—The meaning here is not that every brother should give a fourth of his own share; but the meaning is that the daughter should be given for defraying the expenses of her marriage a fourth of the share which a son of the same caste with her would be entitled to under the circumstances. It therefore follows that out of the four shares to which the son of a *Bráhmanee* wife is entitled and out of the three shares which *Kshatriyas* are entitled to, a fourth share should be given. Here as many texts speak of a fourth share, a fourth share alone shall be given, the object being the marriage sacrament. The rule of Vishṇu as to the giving of a fourth share should be understood in this light. Kalpataru, Prakása and Mitakshara also concur in this view. The view of Halāyudha and others is that in the light of the text of Vishṇu, the rule that a fourth share should be given, means by implication that as much should be given as may be needed for the sacrament. This is but reasonable, seeing that the performance of the sacrament is expedient.

Kátyáyana says: "A fourth share is ordered to unmarried daughters and three shares to sons. But where the property is inconsiderable, daughters are declared entitled to a sum sufficient for the expenses of their marriage".[1] *Commentary*—'But where, etc.', means 'when the fourth share is small and more money is required for the sacrament, the unmarried daughters have a right to as much money as may be needed for the performance of the sacrament'. Therefore it follows so much money alone even when taking it out of his own share should be given by the brother in view to the sacrament; as also the *stridhana* of the mother even while she lives.

Sankha and Likhita say: "Where partition is made, the unmarried daughter takes her own ornaments as also the *stridhana* given to her mother at her nuptials".[2] *Commentary*—'Her own ornaments', *i.e.*, anklets, etc., the unmarried daughter takes.

Baudháyana says: "The daughters shall take the ornaments of their mother usually given her or anything else given to her".[3] *Commentary*—This means that the daughter takes ornaments given to her mother during nuptials as also anything else but ornaments given during nuptials.

Again Baudháyana says: "The Srutis declare that women deserve no share; because they are considered weak and portionless".[4] *Commentary*—Prakása says the word '*Nirindriya*' means 'devoid of strength'. '*Adáya*' means 'portionless'. This rule applies to all women except those who are allowed a share.

Here ends the chapter on 'Persons excluded from Inheritance'.

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[1] II. Cole. Dig, 297, CXXVI.
[2] *Ibid*, 299, CXXIX
[3] Baudháyana, II. 2, 3, 43.
[4] *Ibid*, 2, 3, 46.

CHAPTER VI.

ON PARTIBLE PROPERTY.

On this subject Kátyáyana says: "The wealth of the grandfather, the wealth of the father, and what they themselves had acquired must all be divided at a partition among co-heirs. After giving what has been given by the father out of affection, the remainder shall be divided. That shall be taken by the sons and by male issue in due order to the fourth degree".[1] *Commentary*—What they had themselves acquired except what belongs to any of them exclusively. 'Given out of affection, etc.', means 'what the father had out of affection promised to give'. That must be given and the remainder only divided. As the text says: "To three alone should libations of water be given and to three alone rice balls should be offered", he, who confers spiritual benefit by giving the *pinda* to the deceased, is entitled to share in the wealth of the deceased. Halāyudha holds that the expression 'to the fourth degree' refers to the person to whom the father made the promise of gift.

Nárada says: "In order that the father may not remain a debtor, the balance alone of the father's wealth left after paying his debts and discharging his obligations shall be divided by the brothers".[2] *Commentary*—'His obligations' means 'money promised to another by the father'. Prakásakára reads: *Pitridanebhyah'* for '*Pitridáyebhyah'*. Even according to that reading the meaning is the same.

Kátyáyana says: "At the time of partition all the debts which have been contracted by the brother, the paternal uncle and the mother for family benefit should be paid by those who share the wealth. The debt must be paid to the creditor only where after dispute it is proved by evidence; but otherwise it shall not be paid".[3] *Commentary*—The meaning of this is where the debt contracted by the brother, etc., becomes a matter of dispute, it shall be paid to the creditor only when after dispute arises it is proved by the creditor by evidence and not otherwise.

The same author says: "Debt contracted by the father, his own debt connected with the father's debt and the debt contracted by himself for family benefit; all these debts should be paid by him with his kinsmen when partition is made".[4] *Commentary*—'*Pitriyam*' means 'contracted by the father'. 'Connected with the father's debt' means 'incurred by himself to discharge the debt contracted by the father'. 'His own debt' means 'debt borrowed by him on account of the family as distinguished from the debt of the brothers, etc.,' spoken of in the previous verse, 'debt contracted by himself for family benefit'.

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[1] II. Cole. Dig., 478, CCCLXVIII, and 479, CCCLXIX.
[2] Nárada, XIII. 32.
[3] II. Cole. Dig., 480, CCCLXXI.
[4] II. Cole. Dig., 480, CCCLXXII.

Again Kátyáyana says: "What has been given by one individual for religious purposes or out of affection and debts contracted by him for his own benefit shall not be divided (among all the heirs), if found to be so; for one cannot give away out of the paternal wealth".[1] *Commentary*—Kalpataru says, that whatever is given away by one co-parcener out of the common property for his own religious benefit and whatever is lent by him to another out of affection on his own responsibility shall be debited to him solely at the partition; for there can be no gift by one alone out of common paternal wealth. Prakásakára and Párijáta, however, hold that the debt contracted by one of many for his own individual religious benefit, the debt borrowed by him and given to another out of affection, and the debt incurred by him for his own individual enjoyments; these three kinds of debt, when found to be so contracted, should be separated. They must be paid by him alone who incurred them and not by all out of the common paternal wealth. As a matter of fact all this is contemplated by the text, and it must, therefore, be construed to cover all these cases.

Again Kátyáyana says: "House, land and quadrupeds when discovered should be divided. If there be doubt that property has been concealed, an ordeal in that case is ordained".[2] *Commentary*—The word '*pratyaya*' means 'ordeal'. The meaning of this text is rendered clear by the following text of the same author. "Bhrigu has declared that household utensils, beasts of burden, milch cattle, jewellery and servants must be distributed (among the heirs) when discovered, and if concealed, the *cosa* is ordained".[3] *Commentary*—'Household utensils' means 'the mortar and the rest'. 'Workmen' means 'servants, etc.'. The rest is perfectly clear.

Manu says: "Let the value of a single goat or a single beast with uncloven hoofs never be divided among them. Such a single goat has been ordained to the eldest alone".[4] *Commentary*—The odd sheep, uncloven beast, etc., should not be valued in money and the value divided. But they shall be taken by the eldest alone.

Here ends the chapter on "Partible Property".

CHAPTER VII.

On Impartible property.

On this subject, Manu says: "Property acquired by one's own learning belongs to him alone as also what was given to him by a friend, presented to him at his marriage, or along with the honey-

[1] II. Cole. Dig., 481, CCCLXXIII. [2] II. Cole. Dig., 484, CCCLXXIV.

[3] *Note.*—A *cosa* is one of the many ordeals recognised by Smriti writers and in vogue in former times. It consists in the suspected being made to drink of water in which a holy idol had been washed, the guilt or innocence of the suspected being judged by the visible effects caused by the drinking of such water. II. Cole. Dig., 484., CCCLXXIV.

[4] Manu, IX. 119.

mixture".[1] *Commentary*—Wealth acquired by learning and wealth received at the time of marriage will be subsequently defined. '*Mítram*' means 'received from a friend'. '*Madhuparkikam*' means 'given as a token of respect along with *Madhuparka* (honey-mixture)'. 'All this solely belong to him' means 'is not liable to be divided'.

Yájñavalkya says: "He who recovers property duly descended and taken away shall not divide it with his co-parceners; as also wealth acquired by learning".[2] *Commentary*—'Duly descended' means 'descended from his ancestors'. He among the heirs who recovers such property taken away by others and not recovered by his previous ancestor from incompetence or other causes, shall not divide it with the other heirs. Here the author of the Mitákshara observes. 'This is allowed if permitted by the other heirs.' As regards the text of Háríta found in the Samhita which says that he who recovers singly and by his own pains, land lost by his ancestors, takes a fourth share of it, the others taking their due shares in the rest, it is unreasonable, the text not being quoted in Smritimahárnava, Kámadhenu, Kalpataru, Párijáta and other works.

Vyása says: "Wealth acquired by learning or by valour or given out of affection by the kindred shall be given exclusively to him (the acquirer) at the time of partition. It should not be claimed by other heirs".[3] *Commentary*—'Acquired by valour' means 'gained in war and otherwise'. The meaning of the word 'Saudháyika' will be explained in the text of Kátyáyana beginning with '*Oodaya*, etc.'.

Gautama says: "A learned man if unwilling need not give the unlearned what he himself acquired".[4] *Commentary*—'Acquired by himself' after this 'by his learning' is understood. 'Vaidyah' means 'learned man'.

Kátyáyana says: "Nothing shall be given to the unlearned by the learned out of the wealth acquired by his learning. But he must share it with such as are equal or superior to him in learning".[5]

Nárada says: "A learned man shall not give to the unlearned a share out of his own wealth if it was not acquired by him with the aid of the paternal wealth".[6] *Commentary*—What is here meant is this. Where one having had food and raiment out of the common property and acquired learning, gains without the aid of the common property by his own learning, then he need not give wealth so acquired to one void of learning. But if the wealth was acquired with the aid of the common property by his learning, it should be given even to the unlearned. Where

[1] Manu, IX. 206.
[2] Yájñavalkya, II. 119.
[3] II. Cole. Dig., 444, CCCXLVI.
[4] Gautama, XXVIII. 29.
[5] II. Cole. Dig., 449, CCCL.
[6] Nárada, XIII. 11.

there is no use made of the common property during the time of the acquisition of learning, then although the common property is made use of during the time of the acquisition of wealth, the learned man need not give anything to anybody else. But the wealth belongs exclusively to the learned man; for Vyása after saying that wealth acquired without the aid of the paternal estate is not liable to partition, says that wealth acquired by learning is likewise not subject to partition. Therefore, the impartibility, which will be predicated in the subsequent portion, of wealth acquired by learning, applies to cases where wealth is gained by learning acquired without the aid of the common estate, even though during the acquisition of such wealth the common estate is made use of. This is also Halāyudha's rule. Prakásakára and others, however, say that the texts speak of wealth acquired by learning without any aid of the paternal wealth. That view is wrong; for it is impossible to speak of such wealth as being acquired both with and without such aid.

Nárada again says, "(Let the father distribute among his sons all property) except wealth gained by valour or belonging to a wife and the gains of learning; they have been declared to be not liable to partition as also what is given by the father out of pleasure. This rule also applies to any property given by the mother from affection out of her own wealth; (for) the mother is as competent as the father (to make gifts)".[1] *Commentary*—From the use of the expression 'her own wealth', it follows that this text applies to cases of stridhana.

Vyása says: "What is given by a paternal grandfather or by a father out of affection belongs to him (to whom it is given). That and also what is given by a mother shall not be taken from him".[2]

Yájñavalkya says: "Whatever other property a man has himself acquired without prejudice to the paternal estate and anything received from a friend or on account of marriage shall not be shared with co-heirs".[3] *Commentary*—The word 'other' means 'other than anything given by a friend, etc.'.

Manu and Vishṇu say: "What one acquires by his own efforts and without detriment to the father's wealth, he need not if unwilling give (to his co-heirs)".[4]

Vyása says: "What wealth a man acquires by his own ability without the aid of the father's estate, he need not give to his co-heirs as also what he acquires by learning".[5]

Kátyáyana says: "When a man acquires learning from another, living upon food supplied by a stranger and by learning so acquired gains wealth, such wealth is said to be acquired by learning. What has been offered as a prize and won by a display of learning should be regarded as the gains of learning. It shall not be divided at a partition. What is acquired from a disciple, by officiating as a

[1] Nárada, XIII. 6 and 7.
[2] II. Cole. Dig., 450, CCCLIV.
[3] Yájñavalkya, II. 118.
[4] Manu, IX. 208.
[5] II. Cole. Dig., 451, CCCLIV. 2.

ritwik, by asking a question, by solving a doubtful question, by display of knowledge, by victory in a controversy, and by reciting the Vedas with ability is declared to be the gains of learning. It shall not be divided at a partition. This rule applies also to arts and handicrafts and to the profits made by superior skill in them. The prize offered for and won by learning and money received from a person performing a sacrifice, and from a disciple, all this is declared the gains of learning. Whatever is not thus acquired is common property. Brihaspati says that money staked and won by a man by defeating his foe in a controversy is wealth acquired by learning and not liable to partition. Wealth acquired by boast of learning, received from a disciple, or for services as a *ritwik*, Bhrigu calls the gains of learning".[1] *Commentary*—'*Pradyayana*' means 'superior recitation'. 'Profits, etc.', means 'whatever is gained in excess of a reasonable price by the skill of the seller belongs to him exclusively'. 'Prize offered for and won by learning', that is, "wealth acquired in pursuance of a challenge in the form 'he who recites this chapter or argues this disputed point without blunder shall take it' is the acquirer's exclusive property". 'Acquired by boast of learning' means "acquired by boast in the form 'I alone am skilled in this branch of learning'".

Kátyáyana defines the wealth which is acquired by valour and therefore impartible, in the following passage: "When a person prepared to face a danger performs a heroic deed and the master well pleased at such action shows him a favour, whatever is so acquired is known as wealth acquired by valour. This is not liable to partition; likewise what is taken under a standard. Whatever is acquired in war by a man after putting the forces of the enemy to rout and having risked his life for the sake of his master is said to be taken under a standard".[2]

The same author next defines what wealth acquired by marriage is partible. "What is received along with a maiden of equal class at the time of her marriage is considered as wealth received with the maiden, pure and conducive to prosperity. What is so received along with the wife should be considered as wealth acquired in marriage and all this kind of wealth should be regarded as useful in the performance of religious duties."[3]

Sankha and Likhita say: "According to Prajápati there shall be no division of a house, waterpots, jewellery, concubines, apparel, water, pasture-ground and roads". *Commentary*—'*Vastu*' means 'house'. Whatever is made of metals, jewellery, that which is being worn. '*Anuyukta*' means 'enjoyed'. The meaning is that there shall be no division of women and apparel which had been exclusively used by one. '*Aprampracharavarthmana*' means 'drains or channels for the flow of water.'

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[1] II. Cole. Dig., 444, CCCXLVII.

[2] Attributed to Manu, and found at p. 465, CCCLV, II. Cole. Dig.

[3] Quoted as the text of Manu, II. Cole. Dig., 463, CCCLVIII. II. Cole. Dig., 468, CCCXLII.

Manu and Vishṇu say: "Clothing, *patra*, ornaments, dressed rice, water, women, family priests and spiritual counsellors and pasture-ground, they declare not liable to partition".[1] *Commentary*—The word '*patra*' means 'money in the shape of bonds'; for Kátyáyana defines it as money in bonds; and Brihaspati also speaks of bonds minus debts. Halāyudha, however, interprets '*patra*' as 'vehicle'. '*Krittánnam*' is explained by Párijáta as 'cooked rice, etc.'. 'Women' here means 'concubines'; for Gautama says, that there should be no division of concubines. '*Yogakshema*' means 'advisers, *purohits*, etc.', because they exist for it. '*Prachara*' means 'the way for cattle to go by'. Prakása says, that the word '*Yógakshéma*' means 'any hereditary office held in the family of kings, etc.'. Halāyudha, however, says, that the word '*yoga*' means 'boats, etc.', and that the word '*kshema*' means 'fort, etc.'.

Vyása says: "A place of sacrifice, house, vehicles, dressed rice, water, and women shall not be divided among co-parceners, although they have descended from father to son for a thousand generations".[2] *Commentary*—'*Kshetram*' means 'place of residence'. '*Patram*', according to Prakásakára, means 'vehicle'.

Kátyáyana says: "Wealth secured by documents or dedicated to religious purposes, water, women, a corrody descended from ancestors, valuable apparel, jewellery and whatever is by its nature ineligible shall be assigned to the co-heirs to be enjoyed by them alternately for stated periods. Pasture-ground for cattle, the common way, clothing and anything else worn on the body and tools and appliances used in arts should not according to Brihaspati be divided. Bhrigu has declared that whatever be the customary law proved to be followed in a country, class or tribe or company of merchants, according to that law shall the distribution of heritage be made".[3] *Commentary*—'*Dhritam vastram*' means 'cloths of great value worn on the body'; by this expression only things of small value are meant. 'Dedicated to religious purposes' means '*common to all*' or dedicated for the worship of the deity, such as bell, etc. The word '*Nibandah*' has already been explained. 'Ineligible' here means 'impossible physically to divide'. Halāyudha interprets the word '*Prayujya*' to mean 'outstanding debts'. Párijáta explains the word to mean books of reference, etc., and says that they should not be divided even by fools. 'Tools for arts', *i.e.*, brush, pencil, etc.

Brihaspati says: "Those who declared clothes, etc., indivisible have not properly inquired. The wealth of the rich depends on clothes and ornaments. Such wealth if not divided is not productive; nor can it be allotted to one alone. It should be intelligently divided, otherwise it would be useless. Clothes and ornaments are divided by selling them; bonds, by recovering the money lent; and cooked rice, by exchanging it for unprepared food. Water in

[1] Manu, IX. 219.
[2] II. Cole. Dig., 470, CCCLXIV.
[3] II. Cole. Dig., 471, CCCXLV.

a well or a pool shall be drawn and used as needed. Land and embankments shall be divided according to their respective shares. One woman (slave) shall be made to do duty at their houses according to their shares of inheritance. If there are many women, they shall be distributed equally. This rule applies to males (slaves) also. The emoluments of a hereditary office shall be divided equally. The pasture-ground shall be always used by the co-heirs according to their respective shares".[1] *Commentary*—'Unproductive' means 'being common and therefore useless to any'. It is impossible to allot all that to one co-heir. '*Yogakshemavatah*' means 'of the adviser, *purohit*, etc.'. Here the liability of clothes, etc., of great value to partition is laid down. Therefore the texts of Manu and others speaking of the impartibility only prohibit the division in kind of clothes, etc., of small value; and also prohibit the division of clothes, etc., of great value in any mode other than the one here pointed out for their division. There is no contradiction between the various texts. Prákásakára, however, says that things of small value if worn on the person are not liable to partition, that much wealth existing in the shape of bonds, jewellery, elephants, etc., is certainly divisible and that the mode of their division is pointed out in those texts beginning with '*Madhyastitham*, etc.'.

Kátyáyana next proceeds to state what kind of wealth acquired by learning is liable to partition. He says: "The wealth of brothers who acquired their learning in the family or from the father and wealth gained by valour are liable according to Brihaspati to partition".[2] *Commentary*—'In the family' means 'from the paternal grandfather, paternal uncle, etc.'. The meaning is that wealth acquired by brothers instructed by these or by the father by means of learning or valour is certainly divisible.

Nárada says: "One who supports the family of a brother engaged in learning shall share in the wealth gained by such learning even if he is himself unlearned".[3] *Commentary*—'*Asrutah*' means 'unlearned'.

Manu says: "In property acquired by the eldest brother after the death of the father the younger brothers have a share, if they have been acquiring learning".[4] *Commentary*—This means 'where the eldest brother after the death of the father gains wealth by his own special learning, in wealth so acquired by the eldest he takes two shares, and the younger brothers one share each, if they had been acquiring learning'.

Manu again says: "But the wealth acquired by the brothers, all unlearned, by their labour, shall be equally divided, it being no patrimony. This is settled".[5] *Commentary*—The meaning is that where all the brothers alike unlearned acquire wealth by agriculture, etc., then in that wealth which is not paternal their shares

[1] Brihaspati, XXV. 78–84.
[2] II. Cole. Dig., 448, CCCXLIX.
[3] Nárada, XIII. 10.
[4] Manu, IX. 204.
[5] Manu, IX. 205.

shall be equal, and that there can be no deduction of an additional share allowed there on the ground of one having acquired the greater portion.

Gautama says: "Unlearned co-heirs shall divide their joint acquisitions equally".[1] *Commentary*—'Unlearned' means 'possessing no learning which would make that wealth exclusively the property of any one of them'.

Vasishṭha says: "If one of the brothers has gained something by his own labour, he shall only receive a double share (in it)".[2] *Commentary*—If among many brothers one with the aid of the common estate acquires wealth by agriculture, etc., then he takes two shares and the rest one share each.

Vyása says: "Where one with the aid of carriage and weapons common to all gains wealth by valour, etc., all the brothers have shares in that wealth. He shall take two shares and the rest equal shares".[3] *Commentary*—This text must be construed to apply to cases of wealth acquired by learning, valour, etc., other than those previously defined.

Here ends the chapter on Impartible Property.

CHAPTER VIII.

On Stridhana.

On this subject Manu says: "Never shall women secrete from the wealth of the family common to many or even from the property of her own family without the permission of her husband".[4] *Commentary*—From the use of the term 'family' it follows that family wealth is meant. From the wealth common to many, women should not take out anything without the permission of the owners. Similarly she shall not take out anything without the permission of her husband even from the wealth exclusively belonging to her husband independently of other members of the family.

Manu and Vishṇu say: "The heirs of a man shall not take any jewels worn by his wives during his lifetime. Those who take shall be degraded".[5] *Commentary*—Prákásakára says that according to *Medhatithi* even such jewellery as have been worn without the permission of the husband should not be taken by the heirs.

Ápastamba says: "Ornaments belonging to the wife, as also wealth given her by her kinsmen. So some hold".[6] *Commentary*—The term used in the original means 'money received as *yautaka* at the marriage'. The meaning is that this also belongs to the wife alone.

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[1] Gautama, XXVIII. 31.
[2] Vasishṭha, XVII. 51.
[3] Not found.
[4] Manu, IX. 199.
[5] *Ibid*, 200.
[6] Apastamba, II. 6, 14, 9.

Nárada says: "What was given to the wife by the husband from affection, she may enjoy it as she pleases even when he is dead, or give it away except immoveables".[1]

Vyása in the following passage shows over what portion of the property given by the husband, the wife has independent power. "A share of the wealth amounting to two in a thousand shall be given to the wife. This and the wealth given her by the husband she may use as she likes."[2] *Commentary*—As it is said that the limit of the wife's share is two thousand panas, it follows that where property is inconsiderable, some trifle alone might be given. Some say that in the light of the text that what is self-acquired can be given away at pleasure, this text is intended to refer to common property. Prákásakára, however, says that when the wives of disqualified husbands entitled to be maintained are separated, more than a thousand panas should not be given to them.

Kátyáyana says: "What a woman receives, whether after marriage or before it, in the house of her husband or father, from her brother[3] or from her parents is called a gift from affectionate kindred. As such wealth is given to women that they may live well with it, they have absolute power over it. The absolute power of women over *Saudhayika* is always proclaimed. They can sell it or give it away as they please even if it be immoveable".[4] *Commentary*—The word '*Patyuh*' should be read along with '*griha*' as 'husband's house'. 'From the brother or parents' is only illustrative. '*Saudhayika*' is therefore property received by a woman before or after the marriage, in the house of the husband or her father, from her father or kinsmen. '*Anrusamsyam*' means 'good behaviour'. It therefore follows that such wealth is given to them by their parents, etc., for their good living, and in order that they may not go hard for want of money. Thus in *Saudhayika* wealth the absolute power of women extends to immoveable property also; but in what is given to them by their husbands, their absolute power is only over properties other than immoveable.

Accordingly Kátyáyana says: "What a woman receives from her husband she may dispose of as she pleases after his death; but while he lives, she must preserve it or commit it to his family. A childless woman not violating the bed of her lord and obedient to her spiritual guide may calmly enjoy it till her death. The heirs shall take it after her".[5] *Commentary*—'What is received from a husband' includes all wealth which becomes hers by her relation to her husband. It is two-fold;—what becomes hers after her husband's death owing to non-existence of other heirs;—what becomes hers even during her husband's lifetime, because of her relation to him. The first kind of wealth she may dispose of as she likes, all but the immoveable; being near her *guru* and protecting inviolate

[1] Nárada. Not found.
[2] II. Cole. Dig., 600, CCCCLXII.
[3] Some read 'husband' for 'brother'.
[4] II. Cole. Dig., 594, CCCCLXXV. 1–3.
[5] II. Cole. Dig., 595, CCCCLXXVII.

the bed of her lord, she must pass her days. In respect of immoveable property, the author says: "She may enjoy it till her death and after her the heirs shall take it". In regard to the second kind of wealth, she must preserve it while he lives. According to Prákásakára she must await the permission of her husband in spending it and thus preserve it. Halāyudha and Párijáta, however, say that 'what is received from her husband' means 'the *sridhana* given her by her husband'. But as there are doubts (regarding the extent of the power of alienation by a wife) even with regard to the property which had devolved upon the wife from the sonless deceased, Prákásakára's exposition is satisfactory and is more in keeping with the context, the doubts referred to being pressing.

Manu says: "All faithful wives must thus be taken care of, barren, childless, destitute of relatives, living at home while their husbands are abroad, or afflicted with distress. Those relatives who take the property of such women while they live, a virtuous king should visit with the punishment meted out to robbers".[1] *Commentary*—'*Vasa*' means 'barren'. '*Aputrah*' means 'whose sons are dead'. '*Nishkulah*' means 'whose kinsmen by the mother and the father are dead'.

Devala says: "A woman's livelihood, ornaments, *sulka* and gain are her own property; she shall enjoy it all herself. Her husband shall not take it when in no distress. If he gives it away in vain or consumes it, he should return it to his wife with interest. He may use her property to relieve a son *of his* distress".[2] *Commentary*—'*Virtha*' means 'what is given for her livelihood'. '*Labbiah*' means 'money received from kinsmen'. '*Sulka*' means 'money given to the maiden for the marriage'. When he takes the money under pretext of necessity and gives it away uselessly, or consumes it, then, it must be returned with interest. But to relieve a son of his distress, the property of the wife may be taken even without her consent.

Kátyáyana says: "Neither the husband nor the son, neither the father nor the brother, have power to enjoy or alienate the property of a woman. If any one of them takes by force her property, he shall be made to pay interest and punished with a fine. But if he consumes it with her consent affectionately given, he shall be made to pay the principal alone when he becomes rich (enough to pay). Whatever she affectionately places at the disposal of any of these, seeing him afflicted with disease, immersed in grief or oppressed by creditors, he may repay it to her at his pleasure".[3] *Commentary*—The meaning of the last sentence is that when a woman finding her husband, etc., afflicted with disease, etc., gives them any money out of affection, the husband and the rest shall return it at their pleasure.

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[1] II. Cole. Dig., 598, CCCCLXXX. [2] II. Cole. Dig., 597, CCCCLXXVIII.
[3] II. Cole Dig., 594, CCCCLXXV. 4—7

Yájñavalkya says: "A husband need not repay his wife any portion of her wealth which he had taken in a season of drout for charitable purposes, whilst suffering from disease or while in duress".[1] *Commentary*—'Charitable purposes' where they are necessary. When he is rendered incapable of work owing to disease, he need not repay his wife her money which he had taken for curing himself of the disease.

Kátyáyana says: "If subsequently (to taking his wife's money) he becomes the husband of two wives and does not treat her with proper consideration, he shall be made to repay her even the money which she had given him out of affection. When no provision is made for her food, raiment and residence to the wife, she may by force take her own property and claim her portion from her husband or his heir. This is the law of Likhita. If she get all this, she must live in the family of her husband; but if afflicted with disease and despairing of her life, she may then go to the family of her father. A wife who acts adversely to her husband is shameless, wasteful of property and bent on incontinence, does not deserve to have *stridhana*. Wealth exists for sacrifice. Therefore wealth should be given to those who are virtuous and not to women, fools and vicious persons. The *stridhana* promised by the husband to the wife should be given by the sons as a debt. If she does not live in the family of her husband, she may live in the family of the father".[2] *Commentary*—When the husband does not treat with kindness the wife who gave him her money out of affection, or when no provision is made for her food, raiment and residence, then she may take by force her wealth which she had given to her husband, seeing him afflicted with disease, etc. The rule of the Sastras is that even when she could have all these without effort, she can still take by force the wealth she had given to her husband. When she gets the money, she must reside in the family of her husband. The meaning of 'she may then go, etc.', is that if she be afflicted with dangerous disease, she may go to the family of her kinsmen.

Here ends the chapter on Stridhana.

CHAPTER IX.

On Partition of Stridhana.

On this subject Manu says: "But when the mother is dead, all the uterine brothers and uterine sisters shall equally divide their mother's wealth".[3] *Commentary*—'Equally' means 'without allowing any additional share to the eldest, etc.'. Sisters unmarried and unprovided for are here contemplated agreeably to the text of Brihaspati which follows. '*Sanabhayah*' means 'born of the same womb'.

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[1] Yájñavalkya, II. 147. [2] II. Cole. Dig., 599, CCCCLXXXI.
[3] Manu, IX. 192.

Accordingly, Manu says: "To the daughters of these sisters also, something in due proportion should with affection be given out of their grandmother's wealth'.[1] *Commentary*—'*Their's* stands for 'sisters'. '*Yathamsutah*' means 'according as the wealth is large or small'.

Again Manu says: "Her *anvadheya* property, as well as any wealth given her by her husband from affection, shall go to her issue if she die in the lifetime of her husband".[2] *Commentary*—'*Anvadheya*' will be subsequently defined. Halāyudha says that this text is intended to negative the right of the husband in these two kinds of property. So even where the wife dies during the lifetime of her husband.

Brihaspati says: "*Stridhana* goes to the issue, and the daughter, if unmarried, shares in it. But if she is married, she receives some honorary trifle only".[3] *Commentary*—'Issue' means 'sons'. 'Shares in it' means 'shares equally with the sons'. '*Apratta*' means 'unmarried'. In the light of this text it must be understood that the text of Manu lays down that *only* unmarried daughters share equally with the brothers. As to the married, something, from a sense of fairness, should be given.

Gautama says: "A woman's property goes to her daughters, unmarried and unprovided for".[4] *Commentary*—This is not intended to negative the right of sons to share but to establish the right of daughters to share. 'Daughters unprovided for' means 'married daughters, childless, having an indigent husband or unfortunate otherwise'.

Manu says: "The *yautaka* property of the mother goes to the daughter alone".[5] *Commentary*—'*Yautaka*' here means 'wealth given to a woman at the time of her marriage by her father and the rest'. Halāyudha, however, says, that '*yautaka*' means 'money given to a woman for sundries and improved by her by her own skill', and that brothers and married daughters shall not divide it, but that the childless, the unfortunate and the unmarried daughters should share it equally.

Vasishṭha says: "Let daughters share the nuptial presents of their mother".[6] *Commentary*—Nuptial presents, *i.e.*, apparel, mirror, bracelets, etc.

Yájñavalkya says: "Daughters shall take the wealth of their mothers deducting debts due; and in default of them, their issue".[7] *Commentary*—'Debts', *i.e.*, 'debts due by the mother'. The meaning in effect, therefore, is that the daughters unmarried and unprovided for shall divide the *yautaka* and the nuptial present of their mother left after discharging debts due by her. In default

[1] Manu, IX. 198.
[2] *Ibid*, 195.
[3] Brihaspati, XXV. 87.
[4] Gautama, XXVIII. 24.
[5] II. Cole. Dig., 605, CCCCXCI.
[6] Vasishṭha, XVII. 64.
[7] Yájñavalkya, II. 117.

of daughters, their issue, daughter's son, etc. This text applies where the marriage has been in the Bráhma and other approved forms.

Vishṇu says: "Where a woman dies leaving children, her wealth in all cases goes to her daughter".[1]

Manu says: "The wealth of a woman given to her by her father on any account, her Bráhminee daughter shall take; or it may go to that daughter's issue".[2] *Commentary*—Where she has neither husband nor issue of her own, and where there are co-wives of different castes and daughters by them, then the Bráhminee daughter takes the wealth of her mother's co-wife given by the latter's father. This is the meaning. Prákásakára says, that according to Medhatithi the expression, 'given by her father', is illustrative of all cases of *stridhana*.

Kátyáyana says: "In default of daughters, her wealth goes to her sons. But what she received from her kinsmen goes to her husband in default of her kinsmen. Married sisters shall share with kinsmen. Thus, legal partition of *stridhana* property is ordained".[3] *Commentary*—Wealth received at the time of marriage, *yautaka*, and wealth given by her father go to the sons in default of daughters. To other kinds of *stridhana*, persons previously named are heirs. In default of those previously named, it certainly goes to her husband.

Here ends the chapter on 'Partition of *Stridhana*'.

CHAPTER X.

ON PARTITION OF STRIDHANA OF A WOMAN, MARRIED ACCORDING TO THE VARIOUS FORMS OF MARRIAGE DYING WITHOUT ISSUE.

On this subject, Nárada says: "The *stridhana* of a woman goes to her issue. If she dies childless, it is declared to go to her husband where she has been married in the Bráhma or in one of the four forms mentioned after it. If married in one of the other forms, it goes to her parents".[4] *Commentary*—The word 'four' in the text is not intended to exclude the fifth. Therefore, if married in the *Bráhma, Davia, Ársha, Gándharva,* or *Prájápatya* forms, the wealth of a childless woman goes to her husband; if in any other, *i.e.*, the *Rakshasa,* the *Ásura* or *Paisacha* form, it goes to her parents. This rule applies to *stridhana* received at the time of marriage.

Accordingly, Manu also says: "It is ruled that the property of a woman married in the *Bráhma,* the *Daiva,* the *Ársha,* the *Gándharva,* or the *Prájápatya* form goes to her husband alone if she

[1] Vishṇu, XVII. 21.
[2] Manu, IX. 198.
[3] Cole. Dig., 607, CCCCXCIII.
[4] Nárada, XIII. 9.

die without issue. But the wealth given to her at her marriage in the *Ásura* or other forms, goes to her parents if she die without issue".[1] *Commentary*—'*Aprajasi*' means 'childless'.

Devala says: "On the death of a woman, her *stridhana* goes to her sons and unmarried daughters. If she dies childless, her husband, mother, brother or even father takes it".[2] *Commentary*—Her husband takes it, if married in the *Bráhma* and other forms; her mother in the *Ásura* and other forms. It must, therefore, be understood that the texts of Manu and Nárada are interpreted consistently with what Devala has said.

Gautama says: "The *sulka* of the sister goes to her uterine brothers after the mother is dead. But some hold that it goes to them even before her death".[3] *Commentary*—The wealth received by the sister in the *Ásura* and other forms of marriage goes to her uterine brothers when the mother is dead. The particle '*cha*' means 'even'. Therefore it means—that the same rule applies to the sister's *sulka* even though the mother lives. Some read 'uterine sisters' fore sisters'. Halāyudha observes that this is the view of some others.

Yájñavalkya says: "If a woman die without issue, her kinsmen take the wealth given her by her kinsmen, her *sulka* and what she had received after marriage".[4] *Commentary*—Here *sulka* means 'the price for which a girl is given'. '*Anvadheya*' is indicative of *stridhana*. Kinsmen by her mother. This text also applies to cases of marriage in the *Ásura* and other forms.

Manu says: "If an appointed daughter die sonless by accident, her husband shall take her wealth without hesitation".[5] *Commentary*—This rule must be understood to apply where the sonless appointed daughter leaves neither daughter nor sister.

Paithínisi also says: "When an appointed daughter dies sonless, her husband shall not take her wealth. It shall be taken by her daughter or by her sister". *Commentary*—Here it must be noted that the sister takes it in default of the daughter.

Yájñajavalkya says: "He who having given a maiden withholds her (from her husband) is punishable and shall pay the husband's expenses with interest. But if she die, he shall pay everything, making allowances for expenses on both the sides".[6] *Commentary*—He who having promised by word of mouth to give a maiden withholds her without fault (on the part of the bridegroom) should be punished by the king and made to pay the bridegroom his expenses with interest. But withholding for proper reasons is no blame; for the same author says: "He may withhold from the bridegroom a maiden betrothed, if a better bridegroom is subse-

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[1] Manu, IX. 196 and 197.
[2] II. Cole. Dig., 603, CCCCLXXXIX.
[3] Gautama, XXVIII, 25 and 26.
[4] Yájñavalkya, II. 144.
[5] Manu, IX. 135.
[6] Yájñvalkya, II. 146.

quently available".[1] *Commentary*—But if the maiden dies, by accident, then he shall calculate what had been given by the father to honour the bridegroom's party previously and what had been given by the bridegroom's party such as finger-rings, etc., and pay the balance.

Sankha says: "The bridegroom shall receive back the *sulka*".[2]

Baudháyana says: "The wealth of a deceased maiden, the uterine brothers shall take. In default of them, it goes to the mother, and in default of her, to the father".[3] *Commentary*—'Maiden' means 'an unmarried daughter'.

Brihaspati says: "The mother's sister, the maternal uncle's wife, the paternal uncle's wife, the father's sister, the mother-in-law and the elder brother's wife are declared equal to the mother. When these have no sons, *aurasa* or otherwise, or daughter's sons or the sons of the latter, their sister's son and the rest shall take their wealth".[4] *Commentary*—The meaning is that in default of the *aurasa* son, etc., of the mother's sister, etc., the sister's son, etc., takes the wealth of the deceased.

Here ends the chapter on 'Partition of *Stridhana* under the various forms of marriage'.

CHAPTER XI.

On the Nature of Stridhana.

On this subject, Manu and Kátyáyana say: "*Stridhana* is declared to be of six kinds; wealth given before the fire, wealth given at the time of going to the husband's house, wealth given out of affection and wealth received from the mother, brother and father".[5] *Commentary*—'Given before the fire' means 'given at the time of marriage by anybody whatever'. '*Adhyavahanika*' means 'what is taken by the bride when she leaves for the husband's home'. Medhatithi says that *Adhyavahanika* is wealth given by the father-in-law and the rest when the woman is taken from her husband's house to her father's. That meaning is also acceptable; for the same reason applies. 'Given out of affection' means 'given by the father-in-law, etc., being pleased by her good disposition, virtuous conduct and skill'. The number 'six' is intended to show that there are no fewer, not that there are not more; for Yájñavalkya recognizes one more kind of *stridhana* called '*Adhivedhanika*'.

Yájñavalkya also says: "What is given by the father, the mother, the husband and the brother, what is received before the nuptial fire and *Adhivedhanika* are declared to be the peculiar property of women".[6]

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[1] Yájñavalkya, I. 65.
[2] II. Cole. Dig., 619, DX.
[3] *Ibid*, 618, DVII.
[4] II. Cole. Dig., 621, DVIII.
[5] Manu, IX. 194.
[6] Yájñavalkya, II. 143.

The same author defines *Adhivedhanika* thus: "An equal share should be given as *Adhivedhanika* to the superseded wife where no *stridhana* had been given to her. If given, a half of that is declared".[1] *Commentary*—She is said to be superseded when her husband marries another. Again Vishṇu recognizes another kind of *stridhana* called *Anvádheya*.

He says: "What is given by the father, the mother, friends and brothers, what is received before the nuptial fire, what is paid for supersession, *Anvádheyakam* and *sulka* are the different kinds of *stridhana*".[2]

Nárada says: "What is given before the nuptial fire, what is given when the wife leaves for the husband's house, what is given by the husband, and likewise what is given by the brother and the parents are declared to be the six kinds of *stridhana*".[3] *Commentary*—Here also it is not meant that there are no more than six kinds.

Devala says: "What is given for food and raiment, jewellery, *sulka* and wealth otherwise received are *stridhana*".[4]

Kátyáyana says "Over wealth acquired by a woman by arts or given her out of friendship by others, her husband has ownership always. The rest is her own absolute property".[5] *Commentary*—The meaning is that the husband alone is the owner of wealth acquired by his wife otherwise than in the manner previously mentioned.

The same author says: "What is given to women at the time of marriage before the sacred fire, is declared by good men to be their *stridhana* called '*Adhyagnikrita*' (given before the nuptial fire). What a woman receives while being taken from her father's house is declared her property called '*Adhyávahanikam*' (given at her procession)".[6] *Commentary*—This is the *Adhyávahanika* as defined by Kátyáyana.

The same author says: "What is given to a woman by her mother-in-law or her father-in-law from affection and what is given her in return for her humbly prostrating herself (before elders) is called '*Lávanyárjitam*' (wealth gained by loveliness). What is received by a woman after her marriage from her husband's family or from the family of her parents is called *Anvádheya* (gift subsequent). But Bhrigu gives the name of *Anvádheya* to wealth received by a woman after her nuptials from her husband or from her parents from affection. What is received by a woman as a reward for her managing and looking after the household utensils, beasts of burden, milch cattle, ornaments, and servants is called *sulka* (perquisite)".[7] *Commentary*—The meaning is 'what is

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[1] Yájñavalkya, II. 148.
[2] Vishṇu, XVII. 18.
[3] Nárada, XVII. 8.
[4] II. Cole. Dig., 597, CCCCLXXVIII.
[5] *Ibid*, 589, CCCCLXX.
[6] *Ibid*, 585, CCCCLXIV and V.
[7] II. Cole. Dig., 586, CCCCLXVI and 587, CCCCLXVIII. 1—3.

given to a woman as gratification for her doing her duty well in respect of the household and the rest is called '*sulka*'. '*Saudáyika*' has been already explained in some previous context and is therefore not mentioned in this chapter.

Here ends the chapter on the 'Nature of *Stridhana*'.

CHAPTER XII.

On Partition of Effects concealed.

On this subject, Manu says: "When, after all debts and wealth have been divided according to law, any other property is discovered, it shall be similarly divided".[1]

Yájñavalkya says: "When property is found to have been secreted by one or more co-heirs, they shall divide it again in equal shares. This is settled law".[2] *Commentary*—Seeing that, under the circumstances, a subsequent division naturally follows, Halāyudha says, that the injunction by means of this text indicates that the secreting of common property by one does not constitute the offence of theft.

Kátyáyana says:—"Let sons recover property secreted by one of them and divide it equally after the father's death. Property which the co-heirs have secreted from each other, or which has not been properly divided, let them on discovery thereof divide it equally. So says Bhrigu. Property acquired by one of the co-heirs after the partition belongs to him alone. But he must divide with the rest property recovered by him after it had been stolen or lost and property above described. Property which a relative had secreted, he should not be compelled by violence to restore; nor shall one of many undivided co-heirs be compelled to make good what he had expended".[3] *Commentary*—'Stolen', *i.e.*, by others. 'Lost' means 'missing'. 'Property above described' means 'paternal grandfather's wealth'. 'Should not be compelled by violence to restore' means 'should be recovered from him by use of wiles'. 'Should not be compelled to make good what he had expended' means 'should not, at the time of partition, be made to pay money expended, on the ground that he had benefitted by it more than the rest'.

Brihaspati says: "If a debt or bailment common to all be fraudulently concealed by one, he shall be made to restore it, not by use of violence, but by the use of dodges calculated to deprive the defrauder of his property. Men given to pretending, covetous, wily and avaricious should be subdued by conciliatory methods, either by the loss of their own wealth or by wiles".[4] *Commentary*—When a common debt or bailment is concealed by one, some dodge

[1] Manu, IX. 218.
[2] Yájñavalkya, II. 126.
[3] II. Cole. Dig., 485, CCCLXXVII. 1—4.
[4] Brihaspati, XXV. 96 and 97.

should be used or act done to deprive the deceiver of his property, and he should be made to restore the property he had concealed; but not by use of violence.

Here ends the chapter on 'Partition of Effects concealed'.

CHAPTER XIII.

On Partition among Heirs unequal in Caste.

On this subject, Manu says: "The law already declared should be understood as referring to sons of wives of the same class. Learn now the law as regards sons by wives of different castes. Where there are four wives of a Bráhmin in the order of castes and where sons are born of them, the following rule of partition is ordained. The chief servant, the impregnating bull, vehicle, ornaments and the house shall be given as the additional share to the son of the wife of the Bráhmin caste, as also a larger share for pre-eminence. Of the rest of the heritage, he shall take three shares; the son of the Kshatriyá wife, two; the son of the Vaisyá wife, a share and a half; and the son of the Súdrá wife, one share".[1] *Commentary*—'*Ekayónishu*' means 'of the same caste'. '*Ekajátánam* means 'begotten by the same man', *i.e.*, begotten by the same man on wives of different castes. '*Kenasah*' means 'one who carries the ploughshare'. 'Vehicle', *i.e.*, horse, etc. Therefore the chief servant, etc., should be given to the son of the Bráhmiṇi wife. Of his three shares, one must be made large and valuable. The bull, etc., should be given him, if there be.

In regard to partition when no deduction is allowed, the same author says: "Or let all the heritable wealth be divided into ten shares and let the man who knows the law effect a legal partition according to the following rule:—The son of the Bráhmiṇi wife shall take four shares; the son of the Kshatriyá wife, three shares; the son of the Vaisyá wife, two shares; and the son of the Súdrá wife, one share".[2] *Commentary*—The singular number in '*viprah*' being not in requisition, the same rule applies even where there are many such sons.

Nárada says: "In the case of sons by wives inferior in caste, their shares decrease in the order of castes".[3] *Commentary*—'*Varnávarah*' means 'Kshatriyá and other wives of a Bráhmin'. '*Oodhah*' means 'married'. 'Decrease of shares', *i.e*, three shares to the son born of the Kshatriyá wife, etc. Some read '*Varnántha-reshu*' for '*Varnávareshu*'. The meaning is the same even according to that reading.

In the Mahabharata, Bhishma says: "To a Kshatriyá, O son of Kuru, two wives are permitted; or a Súdra woman may be taken

[1] Manu, IX. 148—151. [2] Manu, IX. 152 and 153.
[3] Nárada, XIII. 13.

as a third wife; but she is not permitted by the Vedas. The wealth of a Kshatriyá, O Yudhisthira, should be divided into eight shares; and the son by the Kshatriyá wife shall receive four shares of the paternal wealth; he shall also take all the implements of war which belonged to his father. But the son of the Vaisyá wife shall have three shares, and the son of the Súdrá wife, one share, *i.e.*, the eighth. The Súdrá son shall take the share if given him by his father; but shall not take it if not so given. To the Vaisyá, one wife only is permitted; or he may take a second wife of the Súdrá caste: but she is not permitted by the Holy Writ. The wealth of a Vaisyá, however, shall be divided, O lord of Bharata, into five shares. I will now lay down, O lord of men, the mode of division among such sons. Four shares of the paternal wealth shall be taken by the son of a Vaisyá wife. But the fifth share shall belong, O Bharata, to the son by the Súdrá wife. He shall take that share if given by the father; but shall not take it if not so given". [1] *Commentary*—The word '*Drishtántah*' means 'the Vedas'. The drift is that, although not spoken of in the Vedas, if a Kshatriyá marries a Súdrá woman as his third wife from desire, then her son takes a share. Similarly with regard to the subsequent portion of the passage. 'Implements of war', *i.e.*, swords, etc.

Yájñavalkya says: "The sons of a Bráhmin shall take four, three, two and one share respectively in the order of the castes of their mothers. The sons of a Kshatriyá, three, two and one share respectively. The sons of a Vaisyá, two and one share respectively". [2] *Commentary*—This rule applies where a Bráhmin marries four, and a Kshatriyá three, wives. 'The sons of a Bráhmin' means 'the sons begotten by a Bráhmin upon wives of different castes'. Where the Kshatriyá and the Vaisyá excel in good qualities, the rule of division pointed out in the Mahábhárata applies; but where they are alike in quality, the rule of Yájñavalkya applies. Thus there is no inconsistency.

Vishṇu says: "The sons of a Bráhmin in the four castes shall divide the paternal wealth into ten shares. Of them, the son of the Bráhmin wife shall take four, the son of the Kshatriyá wife, three; the son of the Vaisyá wife, two; and the son of the Súdrá wife, one. If a Bráhmin has three sons, but no Súdrá son, then they shall divide the wealth into nine parts and take four, three and two shares in the order of their castes. If there be no Vaisyá son, they shall divide it into eight shares; and shall take four, three and one share respectively. If there be no Kshatriyá son, they shall divide into seven shares and take four, two and one share respectively. If there be no Bráhmin son, they shall divide it into six shares and take three, two and one share respectively. This same rule of partition applies in the case of Kshatriyás, Vaisyás and Súdrás. Again, if a Bráhmin has a Bráhmin son and a Kshatriyá son, they shall divide it into seven shares; and the Bráhmin son shall

[1] II. Cole. Dig., 308, CXLIII. 1—7. [2] Yájñavalkya, II. 125.

take four, and the Kshatriyá three, shares. If a Bráhmin has a Bráhmin son and a Vaisyá son, they shall divide it into six shares, the Bráhmin shall take four, and the Vaisyá two, shares. Where the Bráhmin has a Bráhmin son and a Súdrá son, they shall divide it into five shares, of which the Bráhmin son shall take four shares, and the Súdrá, one. Again, where a Bráhmin or a Kshatriyá has a Kshatriyá son and a Vaisyá son, then the property shall be divided into five shares; and the Kshatriyá son shall take three shares, and the Vaisyá, two. Again, where a Bráhmin or a Kshatriyá has a Kshatriyá son and a Súdrá son, the property shall be divided into four shares, of which the Kshatriyá son shall take three, and the Súdrá, one. Again, where a Bráhmin or a Kshatriyá or a Vaisyá has a Vaisyá son and a Súdrá son, the property shall be divided into three shares, and the Vaisyá shall take two, and the Súdrá one share".[1]

Sankha and Likhita say: "Sons by wives of different castes receive shares in sub-duple proportions in the order of their castes".[2]

Vishṇu says: "If a Bráhmin has two Bráhmin sons and one Súdrá son, then the two Bráhmin sons shall take eight shares and the Súdrá, one. Again, if a Bráhmin has a Bráhmin son and two Súdrá sons, then the wealth should be divided into six shares, and the Bráhmin son shall take four and the two Súdra sons, two. In this manner should partition be effected even in other cases".[3]

Again, Vishṇu says: "An only son takes the wealth of a Bráhmin if he be born of a Bráhmiṇi, Kshatriyá or a Vaisyá wife; of a Kshatriyá, if born of a Kshatriyá or a Vaisyá wife; of a Vaisyá, if born of a Vaisyá wife. The Súdrá son takes the wealth of a Súdrá".[4] *Commentary*—Where a Bráhmin has only one son by wives of the Bráhmin and other castes, he takes the whole wealth, if he is a Bráhmin, Kshatriyá or a Vaisyá son. So where a Kshatriyá having two wives has only one son, whether Kshatriyá or a Vaisyá, such son takes the whole wealth. If a Vaisyá has only a Vaisyá son, he takes the whole. If a Súdrá has only a Súdrá son, he shall take the whole. The third wife of a Kshatriyá and the second wife of a Vaisyá being not recognized by the Vedas, they are not mentioned here. The same law applies where the third and the second marriages of the Kshatriyá and the Vaisyá respectively are illegal.

Vasishṭha says: "Where a Bráhmin has Bráhmin, Kshatriyá and Vaisyá sons, the Bráhmiṇi son takes three shares, the Kshatriyá sons, two, and the rest divide equally".[5] *Commentary*—'The rest' means 'Vaisyá sons'. Here the texts of Vishṇu and Vasishṭha which lay down conflicting rules of division, must be construed as not at variance with each other, regard being had to the relative superiority or inferiority of the co-heirs in respect of qualities.

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[1] Vishṇu, XVIII. 1—27.
[2] II. Cole. Dig., 314, CLV.
[3] Vishṇu, XVIII. 38—40.
[4] *Ibid*, 28—31.
[5] Vasishṭha, XVII. 47—50.

Manu says: "All the sons of men of the twice-born classes born either of women of equal castes should allow a deduction in favour of the eldest and the rest shall divide equally".[1] *Commentary*—Where there are many sons begotten by men of the twice-born classes on wives of equal or different castes, then they should give the eldest an additional share and divide equally.

Again, Manu says: "But to a Súdrá, a wife only of the same caste and none other is ordained. Although a hundred sons be born of her, they shall share equally".[2]

Baudháyana says: "If a man has sons by a woman of equal caste and a son by a woman of inferior caste, and the latter is virtuous, he shall take the share due to the eldest. The virtuous son becomes the supporter of the rest".[3]

Brihaspati says: "If the son of a Bráhmin by a Kshatriyá wife be the eldest by birth and excel in good qualities, he shall take an equal share with the son by a Bráhmiṇi wife; so also the son by a Vaisyá wife".[4]

Gautama says: "The son of a Bráhmin by a Kshatriyá wife if virtuous takes an equal share with the eldest, all except the deduction allowed".[5] *Commentary*—'All except, etc.', means 'cows, etc.'. The meaning is the deduction allowed in favour of the eldest son shall not be allowed in his case. Just as the son of a Kshatriyá wife takes equal share with the son of the Bráhmin wife, so where there is no Bráhmin son and there are sons of the Kshatriyá wife and the Vaisyá wife, the son of the Vaisyá wife if virtuous shares equally with the younger son of the Kshatriyá wife devoid of good qualities. The meaning is that the son of the Kshatriyá wife, like the son of the Bráhmiṇi wife in the previous case, does not get the share due to the eldest son. The same mode of division should be followed in the case of the Kshatriyá and the Vaisyá sons of a Kshatriyá. So also with respect to the Vaisyá and the Súdrá sons of the Vaisyá. Thus the rule of Baudháyana about allowing the share due to the eldest son should be observed in the case of the younger brother of the same caste and devoid of good qualities. Where the younger is possessed of good qualities he shares equally. There is thus no conflict of authorities.

Brihaspati says: "Land received as a reward of learning should not be given to a son born of a Kshatriyá or inferior wife. Even if the father give it the son by the Bráhmiṇi wife may resume it after the father's death".[6]

Vriddha Manu says: "The son of the Bráhmiṇi wife alone shall take the land acquired by the aid of sacred literature; but all the sons by wives of the twice-born classes shall take the house

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[1] Manu, IX. 156.
[2] *Ibid*, 157.
[3] Baudháyana, II. 2, 3, 12 and 13.
[4] Brihaspati, XXV. 29.
[5] Gautama, XXVIII, 35 and 36.
[6] Brihaspati, XXV. 30.

as also land descended from ancestors".[1] *Commentary*—'*Brahmadáyagatam*' means 'received as a reward for sacred literature and for officiating at sacrifices, etc.'. '*Dvijátayah*' means 'belonging to the three regenerate classes'. Párijáta interprets the first expression to means 'obtained as a reward for sacred literature' alone.

Brihaspati says: "A son begotten upon a Súdrá woman by any of the twice-born classes shall take no share in land. The son who is by birth of the same caste with the father shall take the whole. Thus is the law settled. The only *Nisháda* son of a Bráhmin takes a third share of his wealth. Two shares shall be taken by *sakulyas* or by *sapiṇḍas*, or by the person performing the funeral rites. In default of kinsmen, the preceptor or the pupil who performs the obsequies shall take them. Under the most difficult circumstances let those shares go to any person of the same original stock".[2] *Commentary*—'Nisháda' means 'son begotten by a Bráhmin on a Súdrá woman'. Thus a third share goes to the son by a Súdrá woman, two shares to the *sapiṇḍas*; and in default, to the *sakulyas*; and in default of the *sakulyas*, the preceptor or the disciple takes them. 'Under the most difficult circumstances' means 'in the absence of all the *sapiṇḍas*, *sakulyas*, etc.'. Then let the shares be given to anybody belonging to the same *gótra* with the deceased father of the *Nisháda*. Párijáta says that this rule applies where the *Nisháda* son is possessed of good qualities.

Vishṇu says: "A Súdrá being the only son of twice-born men, shall take half the wealth; the devolution of the second half is the same as that of the wealth of the sonless deceased".[3] *Commentary*—'Twice-born men', *i.e.*, Kshatriyás and Vaisyás, Bráhmins excepted, because the Súdrá son of a Bráhmin has been declared by Devala to take a third share. The second half belongs to the Bráhmins.

Manu says: "Whether a Bráhmin has sons, or whether he has no sons (by wives of the twice-born classes) he shall not, according to law, give more than a tenth share to a Súdrá son. A son by a Súdrá wife is not heir to his Bráhmin, Kshatriyá or Vaisyá father. Whatever his father gives him, that alone is his wealth".[4] *Commentary*—Having sons by twice-born women or not. Here Lakshmidhara says, that when the father is pleased to give anything to the son by the Súdrá wife, then he shall give only a tenth share. According to his view, therefore, a son by the Súdrá wife is not heir, but takes the share of the wealth given him by the father. By Halāyudha and Párijáta, the first verse has been explained to apply to the son of a Súdrá wife altogether devoid of good qualities and the second to the son of a Súdrá concubine devoid of good qualities, both denying his right to share.

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[1] II. Cole. Dig., 317, CLXXII.

[2] Brihaspati, XXV. 32. The rest not found in Brihaspati. This is quoted as an extract from Devala in II. Cole. Dig., 320, CLXV.

[3] Vishṇu, XVIII. 32—33.

[4] Manu, IX. 154—155.

Brihaspati says: "A Súdrá son, virtuous, attending upon and doing service to his sonless father shall receive maintenance, and the *sapiṇḍas* shall take the rest".[1] *Commentary*—This rule applies to a son by a Súdrá woman not married, because the word '*aparigṛihitasu*' must be read into this verse also.

On this point, Gautama says: "The son by a Súdrá woman also, if doing service to his sonless father, shall have something for his livelihood like the disciple".[2] *Commentary*—The meaning is that the son by a Súdrá woman not married shall, in the absence of sons of the three regenerate classes, obtain something for his livelihood, such as agriculture, etc., if he has been serving and propitiating like a disciple.

Sankha and Likhita say, that he shall take what his father gives him. "The son by a Súdrá woman takes no share. Whatever his father gives him, that alone is his portion. He should be given a pair of cows, not the best, black metal and black grain, except gingily seeds".[3]

Gautama says: "As in the case of the Súdrá son, so in the case of *Pratilomas*".[4] *Commentary*—Sons born of other castes like the son of the Súdrá woman shall obtain their livelihood, like the disciple. This is the meaning.

Manu says: "A son begotten by a Súdrá on his female slave or the female slave of his male slave, may take a share if permitted. This is settled law".[5] *Commentary*—'Female slave' is one answering to the description contained in the verse beginning with 'taken under a standard', etc. 'The female slave of his male slave', *i.e.*, the female slave of a male slave answering to the description above noted. One begotten by a slave upon a maiden by permission is also so regarded. This is settled law. Kalpataru says, that 'the female slave of the male slave' means 'the female slave of his servant'.

Yájñavalkya says: "The son though begotten by a Súdrá upon a female slave may become a sharer by his father's choice; but after his father's death, his brothers shall give him half a share".[6] *Commentary*—'*Kámatah*' means 'by his father's choice'. 'Become a sharer' means 'obtain a share'. If after the father's death his sons by married wives shall exist, then they shall give the son by the female slave half their own share. This is the meaning.

In default of sons by women duly married, the same author says: "If he have no brothers, he shall take all the wealth in default of daughter's sons".[7] *Commentary*—In default of sons by wives duly married, of the wife, of her daughter, and of her son,

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[1] Brihaspati, XXV. 31.
[2] Gautama, XXVIII. 39.
[3] II. Cole. Dig., 323, CLXX.
[4] Gautama, XXVIII. 45.
[5] Manu, IX. 179.
[6] Yájñavalkya, II. 133 and 134.
[7] Yájñavalkya, II. 134.

the son of the female slave certainly takes the wealth after his father's death.

Here ends the chapter on 'Partition among sons unequal in caste'.

CHAPTER XIV.

On the Rights of a son born after partition.

On this subject Manu says: "A son born after partition shall take the father's wealth alone, or shall share it with such of his brothers as live in reunion with him". [1] *Commentary*—Where the sons divide with the father and a son is afterwards born, he takes all the father's share after the father's death. If the father is alive, he takes only a share of the father's property. The particle '*eva*' (alone) indicates that he takes nothing of the shares of the divided brothers.

Brihaspati says: "Where the sons by the same or different wives divide with the father, the sons born after the partition shall take the share allotted to the father. A son born before partition shall have no claim on the father's wealth, nor a son born after it, on the share of his brother". [2] *Commentary*—'*Púrvajah*' means 'born before partition', hence, divided. This son has no claim on the father's share. '*Vibhaktajah*' means 'son born of the divided father'. He has no claim on the brother's share. This is the meaning.

The same author says: "Whatever a father acquires after division with his sons, goes to the son born after partition. Sons born before partition are declared to have no claim to it. As in property, so in respect of debts, gifts, mortgages and sales, they have mutually no claim upon each other except in the matter of pollution and libations of water". [3]

Yájñavalkya says: "A son born, after partition, of a wife of the same caste takes a share; or his share may be of property after calculating receipts and disbursements". [4]

Vishṇu says: "Sons divided with the father shall give a share to a son subsequently born". [5] *Commentary*—These two texts apply to cases of sons in the womb at the time of partition and born after it. By this it is declared that to the son in the womb at the time of partition and born after it, the divided sons should give his share, making it up from their own shares. To the son not so conceived but born after partition, the share of the divided father alone, according to the view of Manu and others, belongs, in view to the fact that his existence in the womb at the date of partition may not

[1] Manu, IX. 216.
[2] Brihaspati, XXV. 17 and 18.
[3] Brihaspati, XXV. 19 and 20.
[4] Yájñavalkya, II. 122.
[5] Vishnu, XVII. 3.

be visible; if the pregnancy was undoubted, there can be no partition at all. So says Prákásakára. Halāyudha, however, quotes Yájñavalkya's text after quoting Vishṇu's and explains it as follows: "If the son born, after the partition, of a wife equal in caste is possessed of good qualities, then he takes a share of all the wealth previously divided—tangible or otherwise. If not excellent in good qualities, he takes his share only of tangible properties, such as land, etc., and the produce thereof after deducting the debts contracted by the brothers".

Here ends the chapter on 'the rights of a son born after partition'.

CHAPTER XV.

ON THE RIGHTS OF AN HEIR ABSENT AT, AND RETURNING AFTER, PARTITION.

On this subject, Brihaspati says: "Where an heir appears before or after partition, and believes he has a claim on the wealth, he takes a share in it". [1] *Commentary*—"*Bhávayati*" means "thinks 'I have a share in this'".

The same author says: "Of debts, wealth secured by documents, house and land descended from the grandfather, he shall take his share of them, though he has been long absent in a foreign country. If a man leaves his family and lives in another country, his share should undoubtedly be given to his male descendants when they appear. Whether he be the third or the fifth or even the seventh, he shall, on clear proof of his birth and name, receive the share that gradually descends to him". [2] *Commentary*—The text of Devala that 'male descendants within the fourth degree shall take, etc.', applies to cases where they are living together and other similar cases. But this rule applies to cases where they are living in countries difficult of access. There is thus no conflict.

The same author again says: "To the descendants of the man who is well-known by tradition among neighbours to have been the proprietor, his kinsmen shall deliver the land". [3]

Here ends the chapter on 'the rights of an heir absent at and returning after, partition'.

CHAPTER XVI.

DIVISION AMONG DIFFERENT KINDS OF SONS.

Manu says: "But where, after the daughter had been appointed to raise offspring, a son is born, the division in that case shall be equal; for there is no right of primogeniture for women". [4] *Com-*

[1] Brihaspati, XXV. 22.
[2] *Ibid*, 23 and 25.
[3] Brihaspati, XXV. 26.
[4] Manu, IX. 134.

menatry—'Son' means '*aurasa* son'. The word '*Anu*' means 'after the appointment of the daughter'. 'Woman', *i.e.*, the appointed daughter has been declared by Manu in the chapter on the nature of sons in the texts beginning with '*Aputronena*'.

Brihaspati says "One alone, namely, the *aurasa* son, is declared to be the owner of the father's wealth. An appointed daughter is proclaimed equal to him; but other sons shall only be maintained".[1]

Manu says: "One alone, the *aurasa* son, is the owner of the paternal wealth. Let him give to others maintenance out of charity".[2] *Commentary*—'Others' here refers to all those who are excluded from sharing in it. To them maintenance should be given out of charity.

The same author says: "Where a son is begotten by the younger brother upon the elder brother's wife, the division shall be equal. This is settled law".[3] *Commentary*—Where a son is begotten upon the wife of the elder brother, undivided and sonless, by the younger authorized in that behalf, that son after the father's death, when dividing the wealth with his paternal uncle, his own procreator, takes an equal share; but not the additional share claimable on the seniority of his father. This is the meaning.

The same author gives the reason of the law in the following text:—"A substitute does not in law become equal to the principal; the father is the principal in procreation. He should therefore be given his share accordingly".[4] *Commentary*—'*Upasarjanam*' means 'secondary'. The *kshetraja* son cannot in law be equal to the primary or *aurasa* son. Therefore, according to Prákásakára the paternal uncle, the procreator, is the principal. Lakshmidhara however says that the word '*upasarjana*' (secondary) is used for the noun *upasarjanatvam* (nature of being secondary). But in effect there is no difference. '*Dharména*' means 'according to law'.

The same author says: "He who takes the wealth and the wife of the deceased brother shall, having begotten a son upon her for his brother, give him all his father's wealth".[5] *Commentary*—He who takes the wealth and the wife of his divided, sonless, and deceased brother, shall, after begetting upon her a son according to the law of procreation, a *kshetraja* son, give to that son alone all his father's wealth and shall not out of avarice take his brother's wealth himself. This is the meaning.

The same author says: "But if an *aurasa* and a *kshetraja* son claim property in the hands of the same person (their mother), each shall take what belonged to his father to the exclusion of the

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[1] Brihaspati, XXV. 35.
[2] Manu, IX. 163.
[3] Manu, IX. 120.
[4] *Ibid*, IX. 121.
[5] Manu IX. 146.

other ".[1] *Commentary*—The *kshetraja* here contemplated is one born of a person not authorized. 'What belonged to his father' means 'wealth given by his father to his mother for the procreation of offspring'. Others say without difficulty that each takes the wealth of him who was his father.

The same author says: "To sons of different fathers, the allotment of shares is by the fathers. Each takes his own paternal wealth and none other."[2] *Commentary*—'Sons of different fathers' means 'sons begotten upon the same woman by different men'. When during treatment of diseases, or by friendship begun during treatment for diseases, a *kshetraja* son is born and an *aurasa* is born after removal of the malady by treatment, then is the *kshetraja* entitled to maintenance merely or a share? And if he is entitled to a share, how is the division to be made?

On this point Manu says: "The *aurasa* making a partition with the *kshetraja* shall give the latter a sixth or a fifth share of the father's wealth".[3] *Commentary*—This alternative of giving a fifth or a sixth share has to be regulated, according as the *kshetraja* son is possessed of good qualities or otherwise.

So again Manu says: "The *aurasa* and the *kshetraja* sons are heirs to the paternal wealth. The other ten (kinds of sons) are in their order heirs to the property of men of the same *gótra*."[4] *Commentary*—The first half of the verse is a declaration of the rule already propounded. The other ten, the adopted son, etc., in their order, in default of those previously mentioned, are heirs to the wealth of the *gnatis*. So says Asaháyáchárya. 'Are heirs to the property' means 'take shares in the father's wealth'. This rule applies, in the absence of the *aurasa*, to the appointed daughter and the *kshetraja* son.

Vasishṭha regarding the son says: "If when he is taken, an *aurasa* son is born, he takes a fourth share if the wealth had not been spent in auspicious ceremonies".[5] *Commentary*—'When he is taken' means 'when a son not *aurasa* is accepted as such'. '*Yadisyát*' means 'if there be much wealth'. 'Auspicious ceremonies', such as sacrifices, etc.

Kátyáyana says: "If an *aurasa* son is born, other sons born of wives equal in caste shall take a third share; but if born of wives unequal in caste, they receive only food and raiment".[6] *Commentary*—The meaning is that where an *aurasa* son is born, the adopted son and the rest, if born of wives equal in caste, take a third share. Here to the son taken a fourth share was previously ordained; but by this text, a third share is ordained. This inequality should be construed in the light of the possession of bad or good qualities by

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[1] Manu, IX. 191.
[2] Not found in the Institutes of Manu in the S. B. E. Series.
[3] Manu, IX. 164
[4] *Ibid*, IX. 165.
[5] Vasishṭha, XV. 9 and 10.
[6] II. Cole. Dig., 348, CCXVIII.

the son. From this text it also follows that the injunction to give maintenance laid down by Manu in the text beginning with '*Seshánám*' applies to the sons born of wives unequal in caste.

On this point, Brihaspati says: "The *kshetraja* and other sons take one-fifth, one-sixth and one-seventh shares".[1] *Commentary*—The meaning is that the *kshetraja*, the *kánina* and the *paunarbhava* sons take a fifth, a sixth and a seventh share respectively.

Háríta says: "When the property is divided, let a twenty-first share be given to a *kánína* son; a twentieth to a *paunarbhava*; a nineteenth to the *ámushyayana*; an eighteenth to a *kshetraja*; a seventeenth to the son of an appointed daughter and the rest to the *aurasa* son".[2] *Commentary*—'*Ámushyáyana*' means 'the son of concealed birth'. '*Itarán*' means 'the remaining sixteen shares'.

Bráhma Purana says: "The *aurasa* son, though the last born, shall enjoy the whole estate. The *kshetraja* son shall enjoy a third of the estate; and a son of an appointed daughter, a fourth. The adopted son takes a fifth; the son of concealed birth, a sixth; the son rejected, a seventh; the son of a maiden, an eighth; the son of a pregnant bride, a ninth; the son bought, a tenth; the son by a twice-married woman, the next share (the eleventh); the son self-given, a twelfth; the son by a Súdrá woman takes for his share, a thirteenth of the paternal wealth".[3] *Commentary*—The sixth share allowed by Brihaspati to the *kánína*, the twentieth share allowed by Háríta to the same, and the eighth share allowed by this text to the same must be reconciled as referring to the *kánína* son according as he is excellent in good qualities, totally devoid of them or middling. The seventh share allowed by Brihaspati to a *paunarbhava*, the eleventh share allowed by the Bráhma Purana to the same and the twentieth share allowed by Háríta to the same must be reconciled as referring to the *paunarbhava* according as he is excellent in good qualities, middling or devoid altogether of them. So also in respect of the *kshetraja* son and the son of concealed birth. Here when the doubt is what any one of the thirteen kinds of sons gets from the father, the Bráhma Purana solves it. The text of Háríta speaks of the mode of division among six kinds of sons. The text of Sankha and Likhita also speaks of the mode of division among six kinds of sons, equal in caste, whose father is deceased. As regards them, the former applies where the other five are inferior in qualities to the *aurasa* and the latter where they are equal in good qualities to the *aurasa*.

Sankha and Likhita say: "To the eldest, an ass shall be given as an additional share. The whole wealth belongs in default of him to the *kshetraja* son and the son of the appointed daughter; in default of them also, to the next three; in default of these even,

[1] Brihaspati, XXV. 39. [2] II. Cole. Dig., 349, CCXIX.
[3] II. Cole. Dig., 344, CCXVII.

to the sons by wives equal in caste, not entitled to share".[1] *Commentary*—Even among sons not heirs, the next succeeding takes the wealth in default of the preceding kinds of sons.

Again the authors say: "The son rejected, the son of the pregnant bride, the son adopted, the son bought, the son by the Súdrá wife and the son self-given are the six kinds of sons who are not heirs".[2] The injunctions of different sages allowing different shares to these must be reconciled as being allowed in consideration of their excellence in, total want of and possession of, good qualities.

Sankha and Likhita say: "The following is the rule of division among the six sons who are sharers—the *aurasa* son, the *kshetraja* son, the son of the appointed daughter, the son of a twice-married woman, the son of a maiden and the son of concealed birth are the six kinds of sons who are kinsmen and heirs and of the same *gótra* with the father and the paternal grandfather; they are *sapiṇḍas* and heirs to wealth. The wealth should be divided into ten shares; the father shall take two, the *aurasa* son, two; the *kshetraja* and the son of an appointed daughter together, three; and each of the rest, one".[3] *Commentary*—'*Vikalpah*' means 'determination of shares'. '*Bandhudáyádáh*' means 'sharers in *gótra*, *pinda* and water and wealth'. This is what is explained by *pitripitámahádínám*, etc. The drift is this—"When the common property is divided into ten shares, two are declared to go to the father; two, to the *aurasa*; and one and a half each to the *kshetraja* and the son of the appointed daughter; one share each alone should be given to the son by the twice-married woman, to the son of the maiden and to the son of concealed birth. This is for maintenance; and this rule applies where one has all these six kinds of sons".

Gautama says: "The *aurasa* son, the *kshetraja* son, the adopted son, the son rejected, the son made, and the son of concealed birth are heirs. The son of the maiden, the son of the pregnant bride, the son of the twice-married woman, the son of the appointed daughter, the son self-given and the son bought are of the same *gótra*; and in default of the *aurasa* and the other sons, take a fourth share".[4] *Commentary*—'They are of the same *gótra*' means 'they are eligible for offering *pinda*, libations of water, etc., and doing other rites and are, therefore, so described'. The statement that the son of a maiden and the rest belong to the same *gótra* alone is made for the purpose of reminding that where there are any of the sons, *aurasa*, etc., they do not take a share. They take a fourth share, in default of the *aurasa* son and the rest and if their father is alive. If their father be not alive and there are no *aurasa* or other sons, they all certainly take the wealth. This fourth share is allowed them when they are possessed of good qualities. The text of Bráhma Purana applies where they are

[1] Not found in Cole. Dig.
[2] II. Cole. Dig., 331, CLXXXVI.
[3] II. Cole. Dig., 331, CLXXXVI.
[4] Gautama, XXVIII. 32, 33 and 34.

devoid of good qualities. Thus there is no conflict. The recognition in the text of Sankha and Likhita of the *paunarbhava* and the *kánína* as heirs, and the denial of their heirship in this text of Gautama should be reconciled as based upon the equality or inequality of castes; for Kátyáyana says that sons born of wives unequal in caste are entitled only to food and raiment. Similarly the denial of Sankha and Likhita of heirship in the rejected son and the adopted son and the inclusion by Gautama of these among heirs, should be understood to apply to different cases.

Having defined the *sahodha*, the *dattaka*, the *krita*, the *svayamupágata*, the *apaviddha* and the *sudraputra* and having the *aurasa* and other sons in view, Vasishtha says: "Where of the previously mentioned classes (*aurasa*, etc.,) no heir exists, these take his (the deceased's) wealth".[1]

Hárita says: "Six kinds of sons are *bandhus* and heirs, viz., the son begotten by oneself upon one's own virtuous wife, the *kshetraja*, the son by a twice-married woman, the son of a maiden, the son of an appointed daughter and the son of concealed birth. The adopted son, the son bought, the son rejected, the son of the pregnant bride, the son self-given *and the son found* are neither *bandhus* nor heirs".[2] *Commentary*—They are *bandhus* and heirs, because they are of the same *gótra*. Lakshmidhara, however, says that they are called '*bandhudáyádáh*', because they take the wealth of the *bandhus*. The drift, however, so far as the importance of the first six and the unimportance of the second six are concerned, is the same.

Manu says: "Of the twelve kinds of sons which a man may have according to Svávambhuva Manu, six are *bandhus* and heirs; and the other six, *bandhus* but not heirs. The *aurasa* son, the *kshetraja* son, the adopted son, the son made, the son of concealed birth and the son rejected, are the six who are *bandhus* and heirs. The son of the maiden, the son of the pregnant bride, the son bought, the son by a twice-married woman, the son self-given, the son by a Súdrá woman, these six are not heirs but *bandhus*".[3]

Baudháyana says: "Sages declare as heirs the *aurasa* son, the son of the appointed daughter, the *kshetraja* son, the adopted son, the son made, the son of concealed birth and the son rejected. Sages declare as belonging to the same *gótra* with the father, the son of the maiden, the son of the pregnant bride, the son bought, the son by a twice-married woman, the son self-given and the son by a Súdrá woman".[4]

Devala, speaking of the twelve other kinds of sons excluding the son by a Súdrá woman, says: "These twelve kinds of sons, born of himself, of another and accidentally found are declared for the purpose of progeny. The first six of them are heirs to all

[1] Vasishtha, XVII. 81.
II. Cole. Dig., 331, CLXXXVII.
[3] Manu, IX. 158, 159 and 360.
[4] Baudháyana, II. 2, 3, 31 and 32.

kinsmen; and the rest, only to the father. There is also a preference in their superiority according to their order. All sons are declared heirs to one who has no *aurasa* son. Where there is the *aurasa* son, there is no superiority among these. Of these, sons born of wives equal in caste take a third share and the rest who are inferior in caste shall depend upon him, being provided with food and raiment".[1]

Vishṇu having defined the *aurasa* son, the *kshetraja*, the son of the appointed daughter, the son by a twice-married woman, the son of a maiden, the son of concealed birth, the son of the pregnant bride, the adopted son, the son bought, the son self-given, the son rejected and the son of unknown birth, says: "Of these, the one preceding is superior to all succeeding. He alone takes the wealth and he shall support the rest".[2]

Nárada says: "The *aurasa*, the *kshetraja*, the son of the appointed daughter, the son of the maiden, the son of concealed birth likewise, the son by a twice-married woman, the son rejected, the adopted son, the son bought, the son made, and the son self-given are the twelve kinds of sons declared. Of these, six are *bandhus* and heirs; and the other six are *bandhus* but not heirs. The one preceding is superior to all succeeding; and the one succeeding is inferior to all preceding. When the father is dead, these have claims upon his wealth in their order. In the absence of the superior, the inferior son takes it".[3]

Yájñavalkya having defined the *aurasa* son, the son of the appointed daughter, the *kshetraja* son, the son of the maiden, the son by a twice-married woman, the adopted son, the son bought, the son made, the son self-given, the son of a pregnant bride and the son rejected, says: "Of these, in the absence of all preceding, the next in order gives the *pinda* and takes the wealth".[4] *Commentary*—These texts according to one of which a particular kind of son is declared to be both a *bandhu* and an heir and according to another of which the same person is declared neither a *bandhu* nor an heir, should be reconciled as having reference to the possession of good qualities and the want of them, as the case may be, of that kind of son. And the change of order in the enumeration of the different kinds as affecting their relative superiority must also be understood as based upon the possession of good qualities by the prior-mentioned and the want of them by the subsequent kind of sons. Similarly, in other matters also, the texts must be reconciled on the same line of reasoning.

Manu says: "Not the brothers, not the parents but the sons are declared heirs".[5]

Again he says: "In the absence of the superior kind of sons,

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[1] II. Cole. Dig. 332, CXC.
[2] Vishṇu, XV. 28, 29 and 30.
[3] Nárada, XIII. 45, 46, 47 and 49.
[4] Yájñavalkya, II. 132.
[5] Manu, IX. 185.

the inferior shall take the wealth. Where there are many sons equal, they all share the wealth".[1] *Commentary*—'Equal' either in the possession of good qualities or in the incidents thereof.

Sankha and Likhita say: "In the absence of the superior kind of son, the inferior takes the wealth".[2] *Commentary*—'In the absence of', etc., means 'in default of the *aurasa* son, etc.'. 'Inferior son' means '*kshetraja*, etc.'.

Brihaspati says: "The adopted son, the son rejected, the son bought, the son made, the son by a Súdrá woman likewise; these are declared middling sons, if pure in caste and deed. The *kshetraja* son is held in contempt by virtuous men; so also the son by a twice-married woman, the son of a maiden, the son of the pregnant bride and the son of concealed birth".[3]

Háríta says: "The son by a Súdrá woman, the son self-given, the son bought; all these are Súdrá sons and are without doubt *khándaprishtáh*. He who abandons his own family and goes into another undoubtedly becomes a *khándaprishtáh* by that bad conduct. He who is made a son in distress, he who is self-given and the son of a Súdrá woman, all these have been declared by Manu to be *khándaprishtáh*."[4] *Commentary*—'*Vaishnavi*' means 'a Súdrá woman'.

Here ends the chapter on "Partition among different kinds of sons".

CHAPTER XVII.

On the Aurasa son.

Vasishṭha says: "Twelve kinds of sons only are recognized by the Puranas. A son begotten by oneself upon one's legally wedded wife is the first called *aurasa*".[5]

Vishṇu says: "Now, there are twelve kinds of sons. One begotten by a man upon his own wife is the eldest".[6]

Manu says: "The son begotten by one upon his own legally wedded wife is known as the *aurasa* son, the first in rank."[7]

Devala says: "The son begotten by one upon his own legally wedded wife is called the *aurasa* son chiefly sustaining the father's lineage".[8]

Yájñavalkya says: "The son of the body is one produced by a lawfully wedded wife".[9]

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[1] Manu, IX. 184.
[2] Not found in Cole. Dig.
[3] Brihaspati, XXV. 41.
[4] Not found in Cole. Dig.
[5] Vasishṭha, XVII. 12 and 13.
[6] Vishṇu, XV. 1 and 2.
[7] Manu, IX. 166.
[8] II. Cole. Dig., 334, CXCV.
[9] Yájñavalkya, II. 128.

Ápastamba says: "The sons of men who approach in due season their wives equal in class, legally married, and not previously married to another, are concerned with religious rites and shall never be excluded from inheritance".[1] *Commentary*—'*Apúrvam*' means 'who had not had another husband and who had not been so much as betrothed to another'. This is Prákásakára's view. '*Sástravihitam*' means 'married according to the injunctions in the Sastras'. 'Religious rites', *i.e.*, agnihotra, etc. '*Dáyenavyatikramah*' means 'they shall have all the heritable wealth'.

Baudháyana says: "The son begotten by a man upon his wife equal in class and legally married should be known as the *aurasa* son. They quote the following verse: 'He proceeds from the several limbs of the body. Thou art born of the heart. Thyself, become thy son. Live a hundred years'".[2] *Commentary*—'Equal in class', *i.e.*, the twice-born to the twice-born, the Súdrá to the Súdrá, and not Bráhmin to Bráhmin, Kshatriyá to Kshatriyá; for otherwise the son of the Kshatriyá woman legally married by the Bráhmin will not be included among the twelve kinds of sons. So says Párijáta.

Sankha and Likhita say: 'Let a Bráhmin take the hands of a woman equal in class; the bodies of his forefathers are born again of her; let him figuratively address his own soul in the person of his son'. So it is said "He proceeds from the several limbs, etc.". "Ancestors seize the infant fetus produced from blood. Thou, my soul, art born again that thou mayest here sleep in body. For the benefits conferred on parents, thou, my soul, art called son; because thou deliverest them from hell called *Put* thou art called *putra* (son)."[3]

Here ends the chapter on 'the *aurasa* son'.

CHAPTER XVIII.

On the Kshetraja son.

After defining the *aurasa* son, Vasishṭha says: "In default of him, the second, the son of a wife duly authorised, shall inherit".[4] *Commentary*—'Authorised', *i.e.*, by the husband or by his elders. 'Second', *i.e.*, to the *aurasa* son.

Vishṇu says: "The son begotten on the duly authorised wife by a *sapiṇḍa* or by one of the highest class is the second, the *kshetraja* son".[5]

Manu says: "He who is begotten according to law on the wife of a man deceased, impotent or diseased, after she is duly authorised is called the *kshetraja* or the son of the wife".[6] *Commentary*—

[1] Ápastamba, II. 6, 13, 1 and 2.
[2] Baudháyana, II. 2, 3, 14.
[3] II. Cole. Dig., 334, CXCVII, 335, CXCVIII.
[4] Vasishṭha, XVII. 14.
[5] Vishṇu, XV. 3.
[6] Manu, IX. 167.

'*Talpah*' means 'wife'. The disease contemplated must be incurable. 'According to law', *i.e.*, 'after being smeared with ghee, etc.'.

Yájñavalkya says: "The son begotten on a wife by one of the same *gótra* with the husband or by another is called the *kshetraja* son".[6] *Commentary*—'*Sagotrena*' means 'by one of the same family'. 'Another', *i.e.*, of the highest class.

Baudháyana says: "The son begotten by another on the wife of a man deceased, impotent or diseased after being duly authorised in that behalf, is called the *kshetraja* or the son of the wife. He becomes the son of two fathers, is of both the families and performs the obsequies and takes the heritable wealth of both the fathers".[1] *Commentary*—He who is begotten by another sonless man, such as the brother-in-law, etc. The form '*Dvipita*' is grammatically correct, the *kap* suffix being optional. '*Dvigotrah*' means 'belonging to both families'. '*Svádáh*' means 'obsequies'.

Yájñavalkya says: "The son begotten by a sonless man on the wife of another duly authorised is declared heir to both and shall perform the funeral rites of both fathers".[2] *Commentary*—But when a man having a son begets a son for another upon that other's wife, the son so begotten belongs not to the begetter but to the husband of the mother. But if, though having a son, he begets a son upon another's wife and sets about it saying 'the son to be born shall belong equally to us both', then the son so begotten becomes the son of both.

Manu says: "The owners of the seed and of the soil are seen in this world as joint sharers of the crop, where the seed had been given in consideration of a special agreement to share the crop".[3]

Nárada and Kátyáyana says: "The offspring of the seed sown by one in another's field with the owner's permission is considered to belong equally to the owners of the seed and of the soil".[4]

Sankha and Likhita say: "Angiras has declared that the offspring belongs to the husband of the mother. But Usanas says that the produce of the seed sown with the consent of the owners of the soil and of the seed shall be shared by both".[5] *Commentary*—'*Mantrasamskárakartuh*' means 'of the husband who takes her hand'. '*Sasyam*' means 'produce of the soil'.

Háríta says: "The son begotten on the wife by another, her husband living, is considered by some as that husband's alone, because she was not independent. If begotten after his death, the son is considered as the son of two fathers; because the husband

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[1] Yájñavalkya, II. 128.
[2] Baudáyana, II. 2, 3, 17 and 18.
[3] Yájñavalkya, II. 127.
[4] Manu, IX. 53.
[5] Not found in Nárada but quoted at page 366, II. Cole. Dig., as Kátyáyana's.
[6] II. Cole. Dig., 363, CCXL.

did not sow the seed. The soil produces nothing without the seed; nor does seed germinate without soil. As both these are seen, some say that he is the son of both. Among these, he is primarily the son of the begetter. Let him offer two funeral cakes and celebrate both fathers with each cake. His son shall name both with the second cake, his grandson with the third; and those remoter descended down to the seventh degree shall make this offering for both ancestors to three degrees".[1] *Commentary*—While the husband is alive, the *kshetraja*, though born of another, belongs to the husband, because women are not independent. When he is dead, although the dependence of the wife survives according to the text, 'The sonless wife not violating the bed of her husband, etc.'; still sages declare the *kshetraja* to be the son of two fathers, because the seed had not been sown in the soil. Not that there is the sower of the seed when the husband is alive; but that, as the author says, the combination of the virtue of the seed and of the soil with the consent of their owners is the cause of the offspring. '*Nirvapah*' means 'rites in honor of the deceased'; because by them the deceased are propitiated. He may celebrate both fathers with the same *pinda* or both with each of the *pindas*. If he is the son of two fathers, he must celebrate both with each of the *pindas*. This is agreeable to Ápastamba's view. '*Dvitíyaputram*' means 'beginning with the son, with the second cake, etc.' Those remoter descendants who offer the wipings shall make the offering in celebration of both ancestors in each of three degrees.

Nárada says: "The son of two fathers shall separately offer *pinda* and water to both and shall take half a share from the estate of his begetter and another half from the estate of his mother's husband".[2] *Commentary*—This text applies where the begetter has an *aurasa* son and the husband of the wife has somehow an *aurasa* son subsequently born. But when neither of them has another son, he takes all the wealth of both.

Baudháyana says: "They also quote as follows: He, the *kshetraja* son, shall offer *pinda* to both, and with every *pinda* he shall pronounce both names. To six, three *pindas* should be given; so acting, he incurs no sin".[3] *Commentary*—'Incurs no sin' means 'is not censurable'.

Here ends the chapter on the *Kshetraja*.

CHAPTER XIX.

On the appointed daughter and her son.

On this subject, Vasishṭha says: "An appointed daughter is considered as the third kind of son. She who has no brothers acquires filiation reverting to the family of her ancestors and becomes

[1] II. Cole. Dig., 363, CCXLI. [2] Nárada, XIII. 23.
[3] Baudháyana, II. 2, 3, 19.

equal to a son". [1] *Commentary*—An appointed daughter is the third son, equal to the *aurasa* son, because she performs his duties. She reverts to the family of her ancestors and attains the rank of a son.

Sankha and Likhita say: "The son of Prachetas has said that the appointed daughter is like the son. Her offspring (the son of the appointed daughter) shall offer the *pinda* to both the maternal and the paternal grandfathers. There is no difference perceived in the world between a son and a daughter's son in respect of benefits conferred by them. From this doubt a man should not marry a brotherless maiden". [2] *Commentary*—'Benefits conferred', *i.e.*, delivery from the hell called *Put*. 'From this doubt' means 'from the doubt whether she has been made an appointed daughter or not'.

Yájñavalkya after speaking of the *aurasa* says: "The son of the appointed daughter is equal to him". [3]

Devala says: "The son of the appointed daughter is equal to him, the *aurasa* son, and like a son shall inherit the wealth of his father and also of his maternal grandfather, if he has no male issue". [4]

Baudháyana says: "A son born of a daughter expressly appointed is the son of an appointed daughter, any other is a daughter's son". [5] *Commentary*—'*Abhyubhajanya*' means appointed with the statement in the form 'the son born of this (daughter) shall be my son'. '*Dauhitra*' means 'son of the daughter'. He should be regarded as the son named 'the son of the appointed daughter'. 'Any other', *i.e.*, than such daughter's son. Kalpataru reads '*asyám*' for '*anyám*'. That is easily understood.

Manu says: "The son of the appointed daughter shall inherit the whole wealth of his sonless father. A daughter's son alone inherits the whole wealth of the sonless deceased". [6] *Commentary*—'Sonless' means 'having no *aurasa* son'. Prákásakára says that the second half of the verse is an explanatory repetition of the first. Udayakara in his commentary on Manu says that the second half repeats the same statement with a reason.

Devala after speaking of the *aurasa* son says: "The son of the appointed daughter is equal to him (the *aurasa* son) and is regarded as an heir. He alone shall give the *pinda* to his father and his maternal grandfather. There is no distinction in the world, according to law, between a son's son and a daughter's son; because the father and the mother of these were born out of the same body. By the son who is born of a daughter, whether appointed or not, from a husband equal in caste, the maternal grandfather becomes a

[1] Vasishtha, VXII. 15 and 16.
[2] II. Cole. Dig., 338, CCIV.
[3] Yájñavalkya, II. 128.
[4] II. Cole. Dig., 337, CCI.
[5] Baudháyana, II. 2, 3, 15.
[6] Manu, IX. 132.

father. He shall give the *pinda* to the matermal grandfather and take his wealth". [1] *Commentary*—'Sonless' means 'having no *aurasa* son'. *The daughter's son* is the son of the daughter, whether appointed or not.

Brihaspati in speaking of the appointed daughter says: "Just as she has ownership in the wealth of her father, even though there are kinsmen, so her son also has ownership in the wealth of his mother and his maternal grandfather". [2]

Sankha and Likhita say: "The daughter takes the *stridhana*, and the wealth of her mother's son also is her share". [3] *Commentary*—The word '*tat*' stands for 'the daughter's mother'. Of her son subsequently born and dying without male issue, the daughter takes the wealth; because she is equal to the deceased's brother. This is the drift.

Manu says: "A sonless man may appoint his daughter in the following manner, to raise offspring for him:—'The male child to be born of her shall be mine and perform my funeral rites'". [4] *Commentary*—'*Svadhakaran*' means 'perfoming *sraddha*, etc.'.

Vasishtha says: "I give my brotherless daughter decorated to you, thinking that the son who shall be born of her will become my son". [5]

Gautama says: "A man having no male issue may appoint a daughter after making an oblation to the fire and performing the *Prájápatya* sacrifice declaring 'her offspring shall be mine'. But some say she may be so appointed by mere intention". [6] *Commentary*—'*Agnim Prájápatim cheshtwa*' means 'after performing the *Agneyi* and the *Prájápatya* sacrifices' or 'performing a single sacrifice with the legal fire', or in default of it, simply worshiping. So says Harihara. '*Samvádhya*' means 'after declaring'. '*Abhisandhimátrát*' means 'by mere intention'. This is a corroboration of the previous view.

Brihaspati says: "Gautama said that a daughter should be appointed after oblation to the fire and the *Prájápatya* sacrifice. But others have said that the daughter of a sonless man is appointed by his mere will". [7] *Commentary*—'*Chinthitha*' means "at the thought 'this is my appointed daughter'".

Vishnu says: "The declaration is in the form 'The son who shall be born of her shall be my son'". [8] *Commentary*—She who is given as an appointed daughter and who has neither father nor mother is certainly an appointed daughter.

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[1] Not found in Cole. Dig. This text belongs probably to some other author, in view to Devala's text already quoted. See Manu, IX. 133, 136.

[2] Brihaspati, XXV. 58.

[3] II. Cole. Dig., 353, CCXXV.

[4] Manu, IX. 127.

[5] Vasishtha, XVII. 17.

[6] Gautama, XXVIII. 18 and 19.

[7] Brihaspati, XXV. 38.

[8] Vishnu, XV. 5.

The Bráhma Purana says: "The daughter of a sonless man who is treated in his mind like a son or appointed in the presence of the king, the sacrificial fire, or kinsmen, or anywhere or by him supposed to be a son when in the womb or given to the bridegroom with *sulka* for that express purpose, after the death of the father should be regarded as an appointed daughter. Such a daughter takes an equal share of the paternal wealth". [1]

Manu says: Let the son of an appointed daughter offer the first funeral cake to his mother, the second to her father and the third to the father's father". [2] *Commentary*—The word '*Asyáh*' (of her) should be read into the last clause.

Here ends the chapter on 'the appointed daughter and her son'.

CHAPTER XX.

On the son by a twice-married woman.

On this subject, Vishṇu says: "The fourth in order is the son by a twice-married woman". [3]

Manu says: The son whom a woman, either forsaken by her lord or a widow, begets of a second husband whom she married out of free will is called the son of a twice-married woman". [4] *Commentary*—After 'begets' the word '*savarnát*' (of one equal in caste) must be read. '*Punarbhutva*' means 'having married a second husband'.

Yájñavalkya says: "A son begotten upon the wife (of another), whether deflowered or not, is called the son of a twice-married woman". [5]

Kátyáyana says: "A son begotten on a woman who, deserting an impotent or degraded husband, marries a second, is the son by a twice-married woman. He clearly belongs to the begetter". [6]

Here ends the chapter on 'the son by a twice-married woman'.

CHAPTER XXI.

On the son of a maiden.

Vasishṭha says: "The son of a maiden is the fifth in rank. The son whom an unmarried damsel produces through lust in her father's house is called the son of a maiden and becomes the son of his maternal grandfather. So sages have declared. On this point, they also quote the following verse: 'By the son whom an unmarried daughter produces from a man equal in caste, the

[1] II. Cole. Dig., 356, 2 and 3.
[2] Manu, IX. 140.
[3] Vishṇu, XV. 7.
[4] Manu, IX. 175.
[5] Yájñavalkya, II. 130.
[6] II. Cole. Dig., 383, CCLXVIII.

maternal grandfather becomes a father. He shall offer the funeral cake and take the wealth'".[1] *Commentary*—'*Kámát*' means 'of her own free will'. '*Apradatta*' means 'unmarried'. '*Tulyatah*' means 'from a mean equal in caste'.

Baudháyana says: "The son begotten on a damsel not married and not given is called the son of a maiden".[2] *Commentary*—'*Asamskrita*' means 'devoid of the *samskára* of marriage'. '*Anatisrishte*' means 'not given'.

The Bráhma Purana says: "The son begotten upon an unmarried woman in her father's house by a man equal in caste is called the son of the maiden and becomes the son of the man to whom she is afterwards given".[3]

Nárada says: "The husband should be regarded as the father of the son produced by his wife while a maiden, the son of the pregnant bride and the son of concealed birth. They are also declared heirs to his wealth".[4] *Commentary*—'*Sahodha*' means conceived in the womb at the time of marriage'. Here if the maternal grandfather has no son, then the son of the maiden and the son of the pregnant bride are his sons. If the maternal grandfather has sons, then they are the sons of the husband. Where both are sonless, they are sons of both. So says Párijáta.

Here ends the chapter on 'the son of the maiden'.

CHAPTER XXII.

On the son of concealed birth.

On this subject, Vishṇu says: "The son of concealed birth is the sixth in rank. He belongs to him on whose wife he was begotten".[5]

Manu says: "A son born in whose house soever, if his father could not be discovered, belongs to the husband of the wife of whom he is born; and is called the son of concealed birth in his house".[6] *Commentary*—'*Talpajah*' means 'born of the wife'. As the owner of the seed is not known, he certainly belongs to his mother's caste. This would be so in the absence of suspicion of connection with one of inferior caste. But where such suspicion exists, he is unfit for all purposes and would belong to the *pratiloma* class.

Here ends the chapter on 'the son of concealed birth'.

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[1] Vasishtha, XVII. 21, 22 and 23.
[2] Baudháyana, II. 2, 3, 24.
[3] Not found.
[4] Nárada, XIII. 17.
[5] Vishṇu, XV. 13 and 14.
[6] Manu, IX. 170.

CHAPTFR XXIII.

On the son of the pregnant bride.

On this subject, Vishṇu says: "The son of the pregnant bride is the seventh in rank".[1] *Commentary*—The son of the pregnant bride belongs to the husband who marries her. Here Prákásakára considering that the *mantras* relating to the marriage ceremony apply only to maidens, questions the *samskára* of a pregnant woman. He concludes by saying that according to others, there is a mode pointed out in the *Śrutis* of repeating the same *samskára* according to the form prescribed in the Atharvana Veda. But really the word '*samskára*' contemplates purification by *homa* and other *karma* distinct from that produced by the *mantras* recited at the time of marriage.

Manu says: "If a pregnant woman, whether known or not known to be pregnant, is married, the son in the womb belongs to the husband and is called the son of the pregnant bride".[2]

Here ends the chapter on 'the son of the pregnant bride'.

CHAPTER XXIV.

On the adopted son.

On this subject, Vishṇu says: "The adopted son is the eighth in rank. He belongs to him to whom he is given by his mother or father".[3] *Commentary.*—After 'yasya' the word 'syát' (belongs) is understood.

Manu says: "He whom his mother or his father affectionately gives with water in time of distress, being equal in caste, is considered the adopted son. The adopted son of a man, if possessed of all good qualities takes all his wealth, though come from another *gótra* (family). An adopted son shall not take the family name or the wealth of his natural father. The *pinda* follows the family name and estate and the funeral rites of one who gives his son in adoption cease in regard to that son".[3] *Commentary*—'In time of distress' mans 'when the adopter has no son'. '*Sadrisam*' means 'equal in caste'. Medhátithi, however, says that the equality contemplated is not one in respect of caste but one in respect of qualities worthy of the family. 'Affectionately' means 'without coercion, etc.'. 'Qualities', *i.e.*, caste, learning, behaviour, etc. Seeing that the adopted son is heir by the very fact of his being a son, the qualification about his possessing good qualities is to entitle an adopted son of good qualities to share in the inheritance even in the event of the subsequent birth of an *aurasa* son and also to indicate that the adopted son devoid of good qualities will, under similar circumstances, be entitled only to maintenance.

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[1] Vishṇu, XV. 15. [2] Manu, IX. 173.
[3] Manu, IX. 168, 141 and 142.

'*Gotra*' means 'the celebrated family name derived from sages, such as Kasyapa, etc.'. As the offering of *pinda* always follows the family name and wealth, it also ceases. The word '*Svadhá*' denotes '*sraddha* and other rites'.

Vasishṭha says: "The son, formed of seminal fluids and of blood, proceeds from the mother and the father (as an effect from its cause). The mother and the father have power to give, to sell and to abandon him; but let one not give or receive an only son; for he should remain for the continuation of his ancestors' line. Let not a woman either give or receive (a son) without her husband's permission. One desirous of adopting a son shall invite his relatives, inform the king, make burnt offerings in the middle of his house, reciting the *vyáhritis* and adopt one not a remote kinsman, than whom no nearer exists. If doubt arise, he shall set the remote kinsman apart like a Súdrá. It should be well-known that through one he saves many". [1] *Commentary*—'Sale' and 'abandonment' are not allowed like gift. Sale is permitted only in distress; and abandonment in case of inability to maintain. Prákásakára says that the desertion of issue is an offence, as the offering of *pinda* and libations of water will cease. The father and the mother have each individually the power to give, with this difference: that if the father be alive the mother could give only with his permission and in his absence, even without his permission. 'Invite his kinsmen', *i.e.*, in order that the adopted son may receive his share, assemble his own *sapiṇḍas*. *Adúrabándhavam*' means 'whose relatives, such as the maternal uncle, etc., are near the spot'. This is enjoined in order that his name, caste, etc., may be learned. In the absence of his relatives, learn his name, *gótra*, etc., by some other strong evidence and adopt. The word '*eva*' has the force of 'even'. If after taking in adoption one whose relatives are not near, a doubt arise as to his Bráhminhood, etc., then the adopter should set him apart with maintenance like a Súdrá son. 'Through one he saves many' means 'by means of one son, he saves many ancestors'. The meaning, therefore, is that he should adopt one whose caste, etc., is ascertained beyond a doubt.

Here ends the chapter on 'the adopted son'.

CHAPTER XXV.

ON THE SON BOUGHT.

On this subject, Vishṇu says: "The son bought is the ninth in rank".[2]

Baudháyana says: "The son who is purchased from his father and his mother, or from either of them, and received in the place of a son, is called the son bought". [3]

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[1] Vásishṭha, XV. 1—8. [2] Vishṇu, XV. 20.
[3] Baudháyana, II. 2, 3, 26.

Manu says: "The son, equal or unequal, whom a man buys from his father and mother for the sake of having a son, is the son bought".[1] *Commentary*—'Equal', *i.e.*, of the same caste. In default thereof, of a different caste. So says Párijáta. Prákásakára, however, says that although an unequal son is spoken of, one of a superior caste should not be taken as a son by one of an inferior caste, nor one of an inferior caste by one of a superior caste. He says that according to Medhátithi, the equality and the inequality is in respect of the possession of good qualities among those of the same caste.

Here ends the chapter on 'the son bought'.

CHAPTER XXVI.

On the son self-given.

On this subject, Vishṇu says: "The son self-given is the tenth".[2] *Commentary*—He belongs to him to whom he gives himself.

Manu says: "The son who, having lost his parents or being abandoned by them without cause, gives himself is called the son self-given".[3] *Commentary*—'Without cause' means 'for no offence'. 'Gives himself', *i.e.*, with the statement 'I am your son'.

Here ends the chapter on 'the son self-given'.

CHAPTER XXVII.

On the son rejected.

Vishṇu says: "The son cast away is the eleventh. He is so called because he was forsaken by his father or mother (or both)".[4] *Cmmentary*—He belongs to him who receives him.

Manu says: "One, whom a man receives as his son after he has been deserted by both his parents or by either of them, is called the son cast off".[5] *Commentary*—'*Utsrishtam*' means 'abandoned'. The abandonment owing to extreme distress, inability to maintain or from any other fault. Receives as a son and not for the purpose of feeding.

Vasishṭha says: "The fifth is the son who, being cast off by his mother or father, is received as a son".[6] *Commentary*—'Fifth' here means 'fifth of the six sons of the second sort'.

Here ends the chapter on 'the son rejected'.

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[1] Manu, IX. 174.
[2] Vishnu, XV. 22.
[3] Manu, IX. 177.
[4] Vishnu, XV. 24 and 25.
[5] Manu, IX. 171.
[6] Vasishṭha, XVII, 36 and 37.

CHAPTER XXVIII.

On the son made.

On this subject, Manu says: "He is considered as the son made whom a man makes his son, if equal, skilled in discerning right and wrong, and endowed with filial virtues".[1] *Commentary*—Medhátithi says that even here the word 'equal' means 'equal in quality'. 'Right', *i.e.*, the virtue of performing the funeral rites of the deceased parents and 'wrong', *i.e.*, their non-performance. 'Filial virtues' means 'inclination to be of service, etc.'.

Baudháyana says: "He is called the son made whom a man makes his son with his consent, being equal in caste".[2] *Commentary*—'*Sakámam*' means 'having the desire', *i e.*, thinking that if he would become the other's son, the other would receive him for a son. 'Equal' means 'equal in caste'.

Yájñavalkya says: "The son made so by himself is called the son made".[3]

The same author says: "This rule laid down by me applies to sons equal in caste".[4] *Commentary*—The expression 'if there be a son of equal caste' is understood. Prákásakára says that in respect of the son of the maiden, the son of concealed birth, the son of the pregnant bride, and the son of the twice-married woman, their equality by caste should be calculated with reference to their begetters and not by virtue of themselves, because they do not answer to the definition of equality of caste.

Here ends the chapter on 'the son made'.

CHAPTER XXIX.

On the son by a Sudra woman.

On this point Vishṇu says: "The son born of any woman whomsoever is the twelfth in rank."[5] *Commentary*—'Any woman whomsoever' means 'a Súdrá woman, married or unmarried'.

Vasishṭha says: "They declare that the sixth is the son by a Súdrá woman".[6] *Commentary*—'Sixth', *i.e.*, among the six sons of the second sort, but only the twelfth anong all the sons, *aurasa*, etc. The expression 'they declare' indicates a variance of view. This difference of view concerns the son's right to inherit the wealth. Manu says so in respect of the son by a Súdrá. The view differs, therefore, according as the son is possessed of good qualities or devoid of them.

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[1] Manu, IX. 169.
[2] Baudháyana, II. 2, 3, 21.
[3] Yájñavalkya, II, 131.
[4] Yájñavalkya, II. 133.
[5] Vishṇu, XV. 27.
[6] Vasishṭha, XVII. 38.

Manu says: "The son whom a Bráhmin begets through lust on a Súdrá woman is a living corpse, and is, therefore, called a *Párasava*".[1] *Commentary*—'Living' because he fulfils to a small extent the desire of a man to become a father; 'corpse' because he is of poor service to his father.

Baudháyana says: "A son begotten through lust upon a Súdrá woman by a man of the regenerate classes is called a living corpse, a *Párasava*".[2]

Again Manu says: "These eleven sons beginning with the *kshetraja*, as already enumerated, the sages declare substitutes for the son to prevent the failure of rites. Those sons, who have been mentioned as sons along with the legitimate son, being begotten by others, belong to the owner of the seed from which they sprang, but not to any other".[3] *Commentary*—'Substitutes for a son' means 'substitutes for the *aurasa* and the son of the appointed daughter'. They have been declared entitled to do the duties of these in default of these, in conformity to the text of Brihaspati which follows. The reason is this: to prevent a failure of the rites, *i.e.*, for fear that the injunction that a man should beget offspring may be violated. This injunction is imperative. That the son should somehow be begotten follows from the following text. The latter half of the passage quoted by denying that these are the only primary sons indicates that these are substitutes; 'and not to any other' denotes that they are primary.

Brihaspati says: "Of the thirteen sons defined in order by Manu, the legitimate son of the body and the appointed daughter continue the line. As in default of ghee, oil is admitted by the virtuous as a substitute, so are the eleven other sons in default of the legitimate son of the body and of the appointed daughter".[4]

The Bráhma Purana says: "The adopted son, the son self-given, the son made, the son bought, or the son rejected, must always be supported. They are considered to belong to a different *gótra*, unconnected by funeral cakes and continuing a different line. On birth and on death (of a kinsman) they share pollution for three days".[5] *Commentary*—By this text their liability to pollution for three days is incidentally mentioned.

Again the Bráhma Purana says: "The *Párasava* sons of a Súdrá are in some cases considered to be the sons of Bráhmins who give food and raiment and of the owners of the soil and the seed; and so also of men of the warrior class afflicted with curse and always doomed to perish; and sometimes of men still bent on money and war".[6] *Commentary*—By this text the doubt of the non-existence of these sons is removed.

Accordingly it is said: "Where there is the legitimate son of

[1] Manu, IX. 178.
[2] Baudháyana, II. 2, 3, 228.
[3] Manu, IX. 180 and 181.
[4] Brihaspati, XXV. 33, 34.
[5] II. Cole. Dig. 404, CCLXXVII.
[6] *Ibid*, 414, CCXCIV.

the body or the son in the appointed daughter, these eleven sons, the *kshetraja* son and the rest, should be regarded as belonging to a different *gótra* and continuing a different line. They shall always perform the *sraddha*, etc., of their fathers, like servants".[1] *Commentary*—The word 'Putrikásuta' means 'the son in the form of the appointed daughter'. 'Kshetraja, etc.,' means 'all sons', the *aurasa* and the appointed daughter excepted; where there is the *aurasa* son or the appointed daughter, *kshetraja* and the rest only continue the line. 'Like servants' means 'from the mere obligation to do the bidding'.

Again it is said: "By the rich Vaisyás, the son of concealed birth, the son of the maiden, the son of the pregnant bride, the *kshetraja* son, the son of the twice-married woman, these five sons are, for fear of the king's chastisement, shunned. The rest are sons of twice-born men".[2] *Commentary*—This text also shows that the Vaisyá may have secondary sons. Thus these texts say that the Bráhmin, the Kshatriyá aud the Vaisyá may have secondary sons.

Next the following text shows how difficult it is for a Súdrá dependent upon his lord to beget sons. "To the Súdrás whose occupation is servitude, who live on food supplied to them by others and whose bodies exist for others' use, sons could never be born."[3]

In reply to the question whether a son is never born of one of the servile class, it is answered: "If from such a servant, whether man or woman, a son is born, that son is himself a servant".[4] *Commentary*.—The meaning is that the son so born is himself dependent on his lord and is never independent in the discharge of his duties as a son.

Here ends the chapter on 'sons by a Súdrá woman'.

CHAPTER XXX.

ON THE INQUIRY INTO SONSHIP.

On this subject, Vasishṭha says: "The wise are at variance on the question; some say that the son belongs to the owner of the soil, and some, to the begetter".[5]

Ápastamba says: "Carefully watch over your wives, lest the seeds of strangers be sown on your soil. The son belongs to the begetter. So far as the next world is concerned, the husband makes such children worthless".[6] *Commentary*—'Apramattah' means 'without inattention'. 'Tantum' means 'male issue'. 'Vapsyuh' means 'be sown'. Lest others' seeds be sown upon the soil. 'Begetter', *i.e*, the owner of the seed. After 'belongs to' the word

[1] II. Cole. Dig., 414, CCXCV.
[2] *Ibid*, CCXCVI.
[3] *Ibid*, CCXCVII.
[4] II. Cole. Dig., 414, CCXCVII.
[5] Vasishṭha, XVII. 6.
[6] Ápastamba, II. 6 13, 7.

Manu says: "The son whom a Bráhmin begets through lust on a Súdrá woman is a living corpse, and is, therefore, called a *Párasava*".[1] *Commentary*—'Living' because he fulfils to a small extent the desire of a man to become a father; 'corpse' because he is of poor service to his father.

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CHAPTER XXX.

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'benefits' is understood. '*Sámparáyé*' means 'in respect of benefits relating to the other world'. 'Mogham' means 'fruitless'.

Again it is said: "Ancient sages in the hymns sung by the God of the Wind say that a man should not sow his seed on the soil of another. As the arrow aimed by one in the air at a deer already hit by another is wasted, so is the seed of one when sown upon another's soil". [1] *Commentary*—The arrow aimed by one at an object through the hole made by another's arrow is wasted. The game has been declared to belong to that other.

Again it is said: "As a perfect man consists of his wife and his issue, so it has been declared that the wife is one with the husband". [2] *Commentary*—As a perfect man includes himself, his wife and his issue, so the wife includes herself and her husband. Even if she were sold, she would not become another's wife. When sold or abandoned, it is said: "The wife is not released from her tie to her husband even by sale or by abandonment". [3] *Commentary*—'Nishkraya' means 'sale'. 'Visarga' means 'abandonment'.

Again it is said: "As with cows, camels, female slaves, goats, ewes and milch-buffaloes, it is not the begetter that owns the offspring, even so it is with the wives of others. Those, who having no field have seed and sow it in another's soil, shall never receive any benefit from the crop which they produce. If (one man's) bull beget a hundred calves on another's cows, they would belong to the owner of the cows and the bull would have spilt its blood in vain. Similarly, the seed of men, who having no ownership in the soil sow it upon the soil of others, benefits the owner of the soil; the owner of the seed reaps no benefit." [4] *Commentary*—The same author on a thorough consideration of the Srutis elaborates the point in the following text:—

"Where no agreement respecting the crop is made between the owners of the soil and the seed, the benefit evidently belongs to the owner of the soil; the receptacle is more important than the seed". [5] *Commentary*—Where the owners of the soil and of the seed do not both exist, then the crop belongs to the owner of the soil, and not to the owner of the seed. The author renders this point clear by the following text:—

"If the seed carried by water or wind germinates in the soil of a man, the crop belongs to the owner of the soil, and the owner of the seed receives no benefit". [6] *Commentary*—Similarly the soil is the more important in the case before us. 'Oghah' means 'a flowing stream'. 'Áhritam' means 'carried'.

The author thus concludes: "This should be understood as the law regarding the offspring of cows, mares, female slaves, camels, she-goats and ewes, birds and milch-buffaloes". [7] *Commentary*—

[1] Manu, IX. 42—43.
[2] *Ibid*, 45.
[3] *Ibid*, 46.
[4] Manu, IX. 46—51.
[5] *Ibid*, 52.
[6] *Ibid*, 54.
[7] Manu, IX. 55.

'This law', that is, that the owner of the seed does not receive the benefit.

Sankha and Likhita say: "When seed is sown upon one's soil without his knowledge, the crop certainly belongs to him". [1]

Gautama says: "The son begotten upon another's wife is not entitled to a share". [2]

When speaking of *Niyoga*, Gautama says: "She shall bear not more than two (sons). The issue belongs to the begetter in default of a special agreement. If begotten on the wife at the request of the husband living, it belongs to the husband; if by a stranger, to the begetter. But being protected by the husband, it belongs to him; or to both the begetter and the husband of the wife". [3] *Commentary*—The husband authorising his wife to raise offspring for him shall not allow her to beget more than two sons, such as a third, and so forth. If she begets more, they belong to the begetter. In default of a special agreement, all the issue belong to the owner of the soil. The issue begotten on the wife of a man who is incompetent to procreate, though it be the third, belongs to the husband of the wife even without a special agreement. If the owner of the seed maintains the wife, then the first issue belongs to the owner of the seed, and if the husband protects her, to him. Where both are desirous of offspring, then the offspring belongs to both. This is the meaning.

Nárada says: "No crop can be produced without soil; nor can there be a crop without seed. The issue therefore belongs by right to both the father and the mother". [4]

Sankha and Likhita say: "The Veda declares that the issue always belongs to the husband of the mother. Some sages say that it belongs to both and celebrates both with the same *pinda*". [5] *Commentary*—'Dvyámushyáyana' means 'belonging to two fathers'. 'Anumantrayate' means 'celebrates both fathers with the same *pinda*'.

They quote the following: "Of Vasishṭha and Kasyapa who were under water, one gets out of the water and begets issue, being unknown to the world". *Commentary*—'Udávasát' means 'from his residence under the water'. *One of them begets an issue* upon the wife of the other.

If it be asked what follows from this, it is replied, "Thus both of them have issue in two ways".

"The following is another peculiarity; for following the custom of the family of one of them, taking his wealth and offering him the *pinda*, they also offer the *pinda* to the begetter, although begotten upon another's soil". *Commentary*—'Parigrahah' means 'observ-

[1] Not found.
[2] Gautama, XXVIII. 23.
[3] Gautama, XXVIII. 8—14.
[4] Nárada, XII. 59.
[5] Manu, IX. 182.

ance'; 'Riktha' means 'taking of wealth'. Having offered the *pinda* and water to one of them, *i.e.*, the owner of the soil, they offer *pinda* and water also to the begetter, though begotten upon another's soil.

Here ends the chapter on 'the inquiry into sonship'.

CHAPTER XXXI.

On sons by analogy.

On this subject, Manu says: "If, among brothers of the full blood, one have a son, Manu has declared them all to be fathers by virtue of that son. If, among many wives of a man, one has a son, Manu has declared them all to be mothers by virtue of that son". [1]

Brihaspati says: "Where there are many uterine brothers born of the same father, and even if one of them has a son, all the brothers are declared to be fathers by virtue of that son. The same rule is declared to apply in the case of many wives of the same husband. If one of them has a son, that son shall offer the *pinda* to them all". [2] *Commentary*—Here Asaháya observes that where men have a brother's son and women a co-wife's son, they should not make substitutes for sons such as *kshetraja*, etc. Párijáta says to the same effect. And Udayakára in his commentary says the same thing.

Here ends the chapter on 'sons by analogy'.

CHAPTER XXXII.

On the Etymology of the word 'Putra'.

On this subject Manu and Vishṇu say: "As the son redeems his father from the hell called *Put*, he has been called *Putra* by the Creator himself". [3]

Hárita says: "There is a hell called *Put* and the soulless man is there tormented. And as a son redeems his father from that hell, he is called *Putra*". [4]

Brihaspati says: "Because a son redeems his father from the hell called *Put* even by the sight of his face, a man should be anxious for the birth of a son. The grandson and the son of the appointed daughter both make him attain heaven. Both are pronounced equal in the matter of inheritance and the offering of *pinda*". [5]

Manu and Vasishṭha say: "If the father should behold the face of his son born alive, he shifts the burden of debt on him and attains immortality". [6]

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[1] Manu, IX. 182.
[2] Brihaspati, XXV. 99 and 100.
[3] Manu, IX. 138.
[4] Not found.
[5] Brihaspati, XXV. 36 and 37.
[6] Vasishṭha, XVII. 1.

Sankha, Likhita and Paithínisi say: "By a son produced anywhere, the father prospers and becomes freed from all debt by the *pinda* which he offers to the ancestors ".[1]

Hárita says: "He who has a son, pure, capable, virtuous even in the first years of his life and able to correct his own faults, transports his ancestors beyond the regions of torment ".[2]

Sankha and Likhita say: "The regular performance of Agnihotra, the study of the three Vedas and the performance of sacrifices during which rewards by the hundred had been given, do not secure a sixteenth part of the benefit which flows from the birth of the eldest son. Heaven is in his hands who is celebrated as the sire of a son and a grandson and the living father of many sons and who has not omitted to study the Vedas or perform the sacrifices".[3] *Commentary*—'Akshunna' means 'not omitted'.

Sankha, Likhita, Vishṇu, Vasishṭha and Hárita say: "By a son, a man conquers all the worlds. By a son's son, he attains immortality, and by a son of that grandson, reaches the solar abode ".[4] *Commentary*—'Bradhna' means 'Sun'.

Yájñavalkya says: "By a son, a grandson and a grandson's son, a man obtains worlds, immortality and heaven. Therefore, women must be honoured, attended to, maintained and well-protected ".[5]

Vasishṭha says: "Infinite are the worlds to him who has sons. The Srutis declare that there is no heaven for him who has no son. A form of course is 'Let them die childless and be evil eaters '".[6] *Commentary*—'Childless' means 'sonless'. 'Be' means 'become'. 'Eaters', *i.e.*, 'evil spirits prone to eating'. It means that it is a great punishmeut, if, for want of a son, one should become an evil spirit. The being sonless is the destruction of enemies; so a son is desired.

This is also said: "A blessing is also thus craved—'let me attain immortality by means of issue '".[7] *Commentary*—Prákásakára says that the previous curse is hurled at enemies and this blessing craved for one's self.

It is said: "The son's son and the son of the appointed daughter lead to bliss and are declared equal in the matter of inheritance and offering of *pinda* and water. The sonless man should somehow strive to beget a son of any description for the offering of *pinda* and libations of water and also for the celebrity of his name. Ancestors, afraid of being thrown into hell, anxiously expect sons in the hope that one of them may travel to Gaya and transport them beyond the region of torment, that he will perform Vrishot-

[1] II. Cole. Dig., 385, CCLXX.
[2] *Ibid*, 420, CCCVII.
[3] *Ibid*, 420, CCCVIII.
[4] II. Cole. Dig., 420, CCCIX.
[5] Yájñavalkya, I. 78.
[6] Vasishṭha, XVII. 2, 3 and 4.
[7] Not found.

sarga, Gayásraddha and Ishtháptirtha ceremonies, that he will protect them in their old age and propitiate them every day. As a man trying to cross a stream with a bad boat sinks, just so the father of a bad son sinks in eternal gloom". [1]

Here ends the chapter on the Etymology of the word 'Putra'.

CHAPTER XXXIII.

On Contemptible sons.

On this subject, Manu says: "The son begotten upon the wife of another not authorised and the son begotten on the mother of a son by her brother-in-law are unfit to share in the inheritance being the son of an adulterer and being produced through lust respectively". [2] *Commentary*—'Anuyuktásutah' means 'the son begotten upon a woman authorised neither by her husband, nor in default of him, by her Guru'. 'Share in the inheritance' means 'share in the wealth of the owner of the soil'. This also indicates his unfitness to offer *pinda*, etc. Considering the text of Nárada which follows, this text applies to sons begotten upon a wife to whose husband no fee had been paid (by the begetter).

Manu again says: "Even the son begotten upon a woman appointed to raise offspring, if begotten in violation of the rules, is unfit to share in the paternal wealth; for he was begotten by an outcast". [3] *Commentary*—'Avidhánatah' means 'not according to the rules prescribed in the matter of Niyoga'.

Gautama says: "The son begotten upon a woman by another while her brother-in-law is alive, takes no share". [4] *Commentary*—A son begotten by another upon a woman whose brother-in-law is alive, takes no share.

Nárada says: "Sons begotten by one or by many upon a woman not authorised are not entitled to share the wealth. They are all sons of their begetters only. They shall offer the *pinda* to their begetters in case a price had been paid for their mother. If no price had been paid, they shall give the *pinda* to the husband of the mother". [5] *Commentary*—'Anuyuktáyám' means 'unchaste from desire'. They shall take no shares, *i.e.*, do not inherit the wealth of the owner of the soil. Prákásakára, however, says that they do not inherit the wealth of their mothers, their mothers' husbands and their maternal grandfathers. As for the right to offer *pinda*, they should offer it to their begetter where a price had been paid for their mother, *i.e.*, where the owner of the seed had taken their mother after paying a price to her husband. The last provision of the text is but reasonable.

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[1] Not found—attributed to Manu in some places.
[2] Manu, IX. 143.
[3] *Ibid*, 144.
[4] Gautama, XXVIII. 23.
[5] Nárada, XIII. 19 and 20.

Nárada in speaking of the twice-married woman and the adulteress says: "The son begotten on such of these women as have been bought for a price belongs to the begetter. But the son of those for whom no price was paid belongs certainly to the husbands of such women".[1]

Manu says: "Where two sons begotten by two different fathers contend for the property in the hands of a woman, each shall take to the exclusion of the other what belonged to his father".[2] *Commentary*—The woman here meant is neither a prostitute nor a twice-married woman nor an adulteress. So says Párijáta.

Here ends the chapter on 'Contemptible sons'.

CHAPTER XXXIV.

On Inheritance to the wealth of the sonless deceased.

On this subject, Manu says: "The widow of the sonless deceased shall raise up to him a son by one of the same *gótra* and deliver to that son the whole wealth of the deceased".[3] *Commentary*—The wife of the sonless deceased shall raise up an offspring to him by her brother-in-law or other *sapiṇḍa* and deliver to that son all the property which belonged to her husband and shall not appropriate it herself. So says Párijáta; but Prákásakára says that the king should send for that son through a *sagótra* and give him all the property. In the result, there is no difference.

Vṛiddha Manu says: "A widow who has no male issue, who keeps the bed of her lord inviolate and who faithfully discharges the duties of her widowhood, shall alone offer the *pinda* and inherit all his wealth".[4] *Commentary*—'Having no male issue', *i.e.*, of any of the twelve kinds enumerated. 'Vrite' means 'in the duties of widowhoods".

Brihaspati says: 'In the holy writ, in law, and in the practice of the world, a wife is declared by sages to be half the body of her husband, sharing equally the fruit of pure and impure acts. Of him whose wife is not dead, half the body lives. How should any one else take his wealth, while half his body lives? Although there are his *sakulyas*, his father, mother, and uterine brothers, the wife of the sonless deceased inherits his wealth. A wife dying before her husband takes away his consecrated fire (Agnihotra) and dying after him she takes, if faithful to him, his wealth. This is an eternal law. Having taken all his moveable and immoveable property, the gold, the silver, grain, chariot and clothing, she shall cause to be performed his monthly, six-monthly and other *sraddhas*. Let her propitiate with oblations and pious gifts herhusband's paternal uncle, guru,

[1] Nárada, XII. 54.
[2] Manu, IX. 191.
[3] Manu, IX. 190.
[4] II. Cole. Dig., 535, CCCCVIII.

daughter's son, sister's son and maternal uncle, likewise the aged and the helpless, guests and women of the family".[1] *Commentary*—Some say that even the *Parvana sraddha* should be performed by a woman. To contradict it the author here enumerates the *sraddhas* as the monthly, six-monthly, etc. By 'monthly *sraddhas*' is here meant the twelve monthly *sraddhas*. 'By six-monthly *sraddhas*' is meant the two *sraddhas* to be performed within six months of the death. By the term '*ádi*' are meant 'the *sraddha* to be performed on the eleventh day after death, the *Sapindíkarana sraddah* and the anniversary performable each year on the date corresponding to the date of death'. Therefore, she should not perform any other. Otherwise, seeing that these *sraddhas* are enjoined by other texts, this text would become superfluous. The *nich* suffix in 'dhápayét' (shall cause to be performed) is used in *svárta* as in 'Rámorájya-makárayat', meaning 'shall perform'. 'Faithful to her lord' means 'chaste'. But Udayakára in his commentary on Manu says that the term 'pativratá' is used in its primary sense and as chastity ends in *Sati*, says that the word 'dhápayét' means (shall cause to be performed) have no right to perform *sraddha*, etc., many do not zealously care for it. Where there is the chaste wife, she takes the wealth of her sonless husband.

Nárada says that in default of the wife, the daughter is entitled. "In default of sons, the daughter succeeds; because of her continuing alike the lineage. Both a son and a daughter continue the lineage of their father".[2]

Manu says: "As is one's self, so is one's son. The daughter is equal to the son. How can another take the wealth when she, who is one's self, is alive".[3]

Brihaspati says: "The daughter like the son springs from the several limbs of a man. How could another person then take her father's wealth while she lives. Equal to her father, and married to one equal to the son, virtuous and attending to his wants and doing him services, she shall take her father's wealth, whether she has been expressly appointed or not".[4]

Again Brihaspati says: "When a man dies leaving neither wife nor male issue, the mother should be considered as her son's heiress or a brother with her permission".[5] *Commentary*—[6] With her permission' means 'with the permission of the mother'.

Manu says: "The mother shall take the wealth of her childless son; and when even the mother is dead, the paternal grandmother shall take the wealth".[6] *Commentary*—'Childless' here means 'having no son, wife, etc.'. The right of the paternal grandmother should be understood to accrue in the absence of the father, the brother and the *sapiṇḍa;* for the right of the father,

[1] Brihaspati, XXV. 46—51.
[2] Nárada, XIII. 50.
[3] Manu, IX. 130.
[4] Brihaspati, XXV. 56 and 57.
[5] Brihaspati, XXV. 63.
[6] Manu, IX. 217.

etc., in default of the mother, etc., is established. 'Dáyádyam' means 'wealth inheritable by heirs'.

Gautama says: "The wealth of the deceased brother not reunited goes to the eldest".[1] *Commentary*—'Not reunited' means 'divided'. If among such brothers one dies without issue, his wealth goes to the eldest brother. This is the meaning. This rule should be understood as applying where the deceased has left no wife, mother or father.

Manu says: "The father shall take the wealth of the sonless son deceased; or the brothers. To three, libations of water must be offered and to three the *pinda* is given. The fourth is the giver of them and the fifth has no concern. To the nearest among the *sapiṇḍas* goes the wealth of the deceased. After them all, a *sakulya*, the spiritual teacher or the pupil takes it".[2] *Commentary*—'Sonless' means 'having no sons either primary or secondary'. 'Anantara' means 'nearest'. 'The wealth', *i.e.*, of the sonless deceased. 'Sakulya' means 'Samánodaka'.

Paithínisi says: "The wealth of the man dying without male issue goes to his brother. In default of brothers, the father and mother shall take it; or his wife not the eldest or a man of the same *gótra* or a pupil or a fellow-student takes it".[3] *Commentary*—'Not the eldest' means 'one performing some of the duties of a widow and not all of them'; for one of the latter kind is superior to the brother in the matter of inheriting the wealth of the husband. Nor does the word 'wife' include an unchaste woman, because she should be driven away from the family. 'Sabrahmachári' means 'a fellow-student'. As regards the text of Sankha, which says that maintenance should be given to women for life, if they keep the beds of their husbands inviolate and that others should be driven away, that applies to women who, without performing the duties of widowhood, are not unchaste. As for the text of Yájñavalkya that parents and brothers likewise inherit, that applies to property acquired by the father, the paternal grandfather, etc. But property acquired without detriment to the paternal wealth goes certainly to the brothers even while the parents are alive.

Devala says: "Next, uterine brothers shall divide the wealth of the sonless deceased, or daughters who are equal, or the father if living. In default of these, brothers equal in class, the mother and the wife in the order mentioned; in default of all these, the members of the family living with him".[4] *Commentary*—'Daughters equal' means 'uterine sisters'. After 'father if living', 'and desirous' is understood. Here Halāyudha interpreting the expression 'in the order' to mean 'in the order pointed out by Yájñvalkya, etc.', reconciles the apparent contradiction in the passage beginning with 'this is the gist of the rules on this point? The list of heirs

[1] Gautama, XXVIII. 27.
[2] Manu, IX. 185, 186 and 187.
[3] II. Cole. Dig., 536, CCCCX.
[4] *Ibid*, 532, CCCCIV.

in their order to the wealth of a deceased sonless Bráhmin beginning with the wife and ending with the *srotriya*, and the list of heirs in their order to the wealth of a deceased sonless non-Bráhmin from the wife down to the king, have been given. The object of the author of the Kalpataru in quoting the texts of Yájñavalkya and Vishṇu after that of Devala is to show that in interpreting the text of Sankha and Likhita a far-fetched construction should be made and that into the text of Devala which does not prescribe the order among heirs, the order mentioned in the text of Yájñavalkya and Vishṇu should be read. But as a mater of fact there is really no conflict, seeing that the rule of Paithínisi, which says that the wealth of a sonless deceased goes to his brother, applies to property other than that acquired by the father and the paternal grandfather and that the next portion following it, *i.e.*, the mother and the father taking in default of brothers, does not prescribe the order.

Yájñavalkya says: "The wife, the daughters, both parents, the brothers, their sons, kinsmen of the same *gótra*, distant kindred, a pupil and a fellow-student; of these on failure of the first mentioned, the next in order takes the wealth of a sonless man who has gone to heaven. This law applies to all classes".[1] *Commentary*—The meaning is that of the wife, the daughter, the mother, the father, the brothers, brothers' sons, kinsmen of the same *gótra*, distant kindred, a pupil and a fellow-student, in default of those previously mentioned, the one succeeding becomes the heir. The wife here contemplated is the wife possessing excellent qualities. 'Sonless' here means, according to Prákásakára, 'having no son, grandson or great-grandson'. This is correct according to the legal sense of the term. Although the use of the word 'parents' at the first glance suggests that both the father and the mother have joint rights of inheritance, still seeing that from the text that the mother should be regarded as the heiress of her son dying without wife and male issue, the right of the mother independently of the father and in default of the wife and the male issue is recognised, it is indicated that the father's right accrues in default of the mother.

Vishṇu says: "The wealth of a man dying without male issue goes to his wife; in default of her, to his daughter; in default of the daughter, to the father; in default of the father, to the mother; in default of the mother, to the brother; in default of the brother, to the brother's son; in default of the brother's son, to the *Bandhus;* in default of the *bandhus,* to the *sakulyas;* in default of them, to the fellow-student; in default of him, to the king, except the wealth of a Bráhmin".[2] *Commentary*—'*Bandhus*' means '*Sapiṇḍas*'. '*Sakulyas*' means 'men of the same *gótra*'. So says Misra.

After speaking of the daughter and her son, Brihaspati says: "In default of these, uterine brothers or brother's sons, agnates, cognates, pupils or learned Bráhmins are entitled to the wealth of

[1] Yájñavalkya, II. 135 and 136. [2] Vishṇu, XVII, 4—13.

the deceased. Where a man dies leaving no issue, nor wife nor brother, nor father, nor mother, all his *sapiṇḍas* shall divide his wealth in due shares. Half of the whole wealth, however, shall be reserved from the division for the spiritual benefit of the deceased and carefully assigned for the performance of his monthly, six-monthly and annual *sraddhas*. When there are several relatives, agnates and cognates of the sonless deceased, the nearest among them shall take his wealth".[1] *Commentary*—The locative case in 'Shánmásiká', etc., has the force of the ablative.

In respect of the sonless deceased, Ápastamba says: "In default of sons, the nearest *sapiṇḍa* takes the wealth. In default of *sapiṇḍa*, the spiritual teacher; in default of him, a pupil, takes it, and shall use it for the benefit of the deceased; or the daughter may take it".[2]

Baudháyana says: "The great-grandfather, the grandfather, the father, one's self, his son, his grandson, and his great-grandson, these they call *sapiṇḍas*, being sharers of undivided oblations. The sharers of divided oblations they call *sakulyas*. Where there are no sons, the wealth goes to the *sapiṇḍas*; in default of *sapiṇḍas*, the *sakulyas* take it; on failure of the *sakulyas* also, the spiritual teacher, the pupil or the *ritwik* takes it. In default of all these, the king".[4] *Commentary*—This terminology applies to cases of inheritance and not to cases of pollution, etc. There those who are alike in *pinda* are *sapiṇḍas;* and even such of them as are divided would be *sapiṇḍas;* but here such as are divided are not *sapiṇḍas*. 'Sons', *i.e.*, sons of the body, etc. 'It goes to them' means 'it goes to the *sapiṇḍas*'.

Nárada says: "In default of daughters, the *sakulyas* succeed; in default of them, the *bandhus;* after them, men of the same caste; in default of all, the wealth goes to the king, unless it should be a Bráhmin's. A king intent on virtue should allot maintenance to his women. Thus has the law of inheritance been declared".[4] *Commentary*—'Sakulyas' are the sons of paternal uncle, etc. 'Sajatyáh' means 'men of the same caste'. The rule about maintenance applies to cases of Bráhmin women thoroughly indigent.

Manu says: "In default of all, Bráhmins versed in the three Vedas, pure and self-controlled, shall take the wealth. So does virtue not diminish. The wealth of a Bráhmin should never be taken by a king. This is settled law. But the wealth of the men of the other castes, the king may take in default of all. The king except in the case of the Bráhmin's wealth, shall take the property to which there is no heir in all cases; but the wealth of an heirless Bráhmin he shall cause to be given to learned Bráhmins".[5] *Commentary*—'Adáyakam' means 'heirless'.

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[1] Brihaspati, XXV. 51—62.
[2] Ápastamba, II. 6, 14, 2—4.
[3] Baudháyana, I. 5, II. 9—14.
[4] Nárada, XIII. 51 and 52.
[5] Manu, IX. 188 and 189.

Baudháyana says: "The wealth of a Bráhmin destroys the taker and his sons and grandsons. Poison kills the taker only. Therefore the king should never take the wealth of a Bráhmin".[1] *Commentary*—What is called the Bráhmin's wealth is the worst of poisons.

Brihaspati says: "The king shall take the wealth of a Kshatriyá, Vaisyá or Súdrá dying without male issue, wife or brother; for he is the lord of all".[2]

Sankha and Likhita say: "The property of a learned Bráhmin goes to the Bráhmins and not to the king. Wealth dedicated to the gods or Bráhmins should not be taken by the sovereign; nor may he take a deposit, open or sealed, or wealth descending from father to son or belonging to infants or women; for the Veda declares: 'The wealth of women or of infants should not be taken by the king, nor the sixfold acquisition of women, nor the patrimony of infants'".[3] *Commentary*—The word 'Parishad' means 'Bráhmins'. 'Upanidhi' means 'a kind of deposit'. Párijáta says, that 'kramágatam' means 'inherited from ancestors'. 'Sixfold acquisition' means 'wealth received in six ways, such as before the sacrificial fire, etc.'.

Manu says: "The king shall protect the wealth inherited by an infant till he is married, or till he have passed his infancy".[4] *Commentary*—He should protect the wealth of the infant from being seized by his *sapiṇḍas*.

Vishṇu says: "The king shall protect the wealth of infants, helpless men, and women".[5]

Sankha and Likhita say: "The king should protect the wealth of infants who are incapable of managing their own affairs and of the widows, of Bráhmins and valiant soldiers. But the wealth of which there is no owner, goes to the king".[6] *Commentary*—The king must guard the wealth of these women in the absence of their husbands.

Baudháyana, speaking of the rights of son, says: "If they are incapable of conducting their own affairs, the king should well protect their shares with the accumulations thereon till they attain their age".[7] *Commentary*—'With the accumulation' means 'with the increase'. 'Well protected' means 'carefully guarded'. 'Till' is used in the sense of restriction meaning 'before they have attained or completed their seventeenth year'.

Kátyáyana says: "Let all the co-heirs protect the share of an absent coparcener; but if he dies leaving an infant-son, the whole wealth must be preserved by the kinsmen of that son, and they shall

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[1] Baudháyana, I. 5, II. 16.
[2] Brihaspati, XXV. 67.
[3] II. Cole. Dig., 573, CCCCXLVII.
[4] Manu, VIII. 27.
[5] Vishṇu, III. 65.
[6] II. Cole. Dig., 575, CCCCLI.
[7] II. Cole. Dig., 575, CCCCLII.

divide it in proper shares after the minor has attained his age".[1] 'Bálaputré' means 'having an infant son'. 'Pogandah' means 'infant incapable of managing his affairs'.

Vishṇu says: "He who takes a share should give the *pinda*".[2]

A Smriti says: "He who takes the wealth should perform the *sraddha* to the owner of the wealth and should give the *pinda* to three ancestors".[3] *Commentary*—The word 'sraddha' here denotes the *proshita sraddha* and the *ekoddhishta*, etc. So says Prákásakára.

Brihaspati says: "The brother or the brother's son or the *sapiṇḍa* or the pupil having performed the *sapiṇḍikarana* shall obtain prosperity".[4]

Vasishṭha says: "The son even though he receives no patrimony shall offer the *pinda*".[5]

Vishṇu says: "The preceptor or the pupil shall take the wealth of an ascetic".[6]

Yájñavalkya says: "The heirs of an ascetic and a *sanyásin* and of a brahmachárin are in order: the preceptor, the virtuous pupil and the fellow-student and brother in virtue".[7] *Commentary*—'In order' means 'in the inverse order'. Thus the preceptor shall take the wealth of a *brahmachárin;* the virtuous pupil, the wealth of a *sanyasin*. 'Virtuous', *i.e.*, skilled in hearing, remembering and practising the truths of the Vedanta Sastra. The fellow-student and brother in virtue takes the wealth of an ascetic. 'Brother in virtue' means 'associated with him as brother in the performance of religious duties'. 'Fellow-student', *i.e.*, a pupil of the same preceptor and belonging to the same order. Although this rule conflicts with the text of Vasishṭha, which says that men in other orders take no shares, it must still be reconciled on the supposition that the ascetic may sometimes come by property.

Here ends the chapter on the inheritance to the wealth of the sonless deceased.

CHAPTER XXXV.

On Partition after Reunion.

On this subject, Manu says:—"If brothers once divided live again together and make a second partition, the division shall in that case be equal and the eldest shall not there take an additional share".[8] *Commentary*—'Living together' means 'living together

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[1] Not found.
[2] Vishnu, XV. 40.
[3] Not found.
[4] Brihaspati, XXV. 101.
[5] Found in Vishnu, XV. 43.
[6] Vishnu, XVII. 15 and 16.
[7] Yájñavalkya, II. 136.
[8] Manu, IX. 210.

as coparceners'. The division shall be equal and no deductions shall be allowed in favour of the eldest, etc.

Again the same author says: "If among them, the youngest or the eldest is deprived of his share, or if either of them dies, his share is not lost".[1] *Commentary*—If among reunited brothers one loses his share by becoming a *sanyásin*, etc., or dies, his share is not then lost.

Then as to the question who takes it, the same author says: "His brothers by the same mother having assembled together shall divide it equally as well as those brothers who were reunited and uterine sisters".[2] *Commentary*—'Of the same mother' qualifies 'brothers'. Therefore, it is clear that it is only such of the brothers as are reunited with him and are born of the same mother that take the share. '*Sanábhayah*' means 'born of the same womb'. Prákásakára says that of these the unmarried only are here meant; because the married belong to the *gótra* of the husband.

Brihaspati says: "Those two who after division live again together affectionately, inherit to each other".[3]

Again he says: "When brothers who after division live again together out of affection, there is no question of priority among them at a second partition. When any of them dies or becomes a *sanyásin* from any cause, his share is not lost and it goes to his uterine brother; and his sister is entitled to a share out of it. This rule applies in the case of the deceased who left no issue, wife or father. If one among the reunited brothers acquire wealth by learning, valour or the like, two shares must be given to him and the rest shall have one share each".[4] *Commentary*—Wealth acquired by learning, valour and other kinds of wealth to the use of which he is exclusively entitled.

Nárada says: "The share which belongs to a reunited coparcener is declared to be his own. So when one of the sharers has no issue, it shall go to the rest after those who are childless".[5] *Commentary*—'*Athonyahdá*' means 'in the absence of the reunited co-parceners'. '*Nirbijeshu*' means 'who have no children'. '*Itarán*', *i.e.*, 'those who have no share being not reunited'. '*Eyar*' means 'shall go'. Prákásakára says that they alone are heirs even though they have sons—and that the brother's share goes to the childless. Párijáta, however, reads '*Anamshabhájah*' for '*Amshabhájah*'; but this reading has been abandoned, because it does not agree with many books.

Sankha says: "If one among the brothers leaves the country or dies, the rest shall divide his wealth except the *stridhana*. They shall also maintain his women for their lives, if they keep

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[1] Manu, IX. 211.
[2] *Ibid*, 212.
[3] Brihaspati, XXV. 76.
[4] *Ibid*, XXV. 73—75 and 77.
[5] Nárada, XIII. 24.

their husband's bed inviolate; but they shall refuse maintenance to other women. To his daughter, her father's share should be given for maintenance".[1] *Commentary*—The women here meant are those who do not strictly perform the duties of widowhood but are not unchaste. The 'wife' in the text 'of the man dying without wife or father' refers to the wife who strictly performs the duties of widowhood and is not unchaste. Párijáta, however, says that 'women' here means women of the same class. Therefore, according to his view the word 'wife' in the text refers to the first wife of equal caste. 'To others' means 'to those who do not keep their husband's bed inviolate'. Kalpataru says that the daughter is entitled to as much wealth as is necessary for her maintenance till marriage and for the expenses of the marriage.

Yájñavalkya says: "The reunited brother inherits the wealth of the reunited deceased, and shall give a share to the reunited born. The uterine brother shall take the share of the deceased uterine brother and shall give a share to the uterine brother born".[2] *Commentary*—Of the deceased reunited heir, the reunited coparcener shall take the wealth and not the heir of the deceased. The uterine brother inherits to the uterine brother. The meaning is where brothers of different mothers unite, the uterine brother takes the wealth of the deceased reunited coparcener.

If now a reunited coparcener dies leaving his uterine brother not reunited with him, and his brother by a different mother reunited with him, the same author says: "A brother by a different mother if reunited, not any other half-brother, shall inherit the wealth. But a uterine brother though not reunited shall take it and not a brother by a different mother".[3] *Commentary*—A brother by a different mother shall not take the wealth, if not reunited. By this text, both by the methods of agreement and difference, it is established that one being born of a different mother and living in reunion gives him a right to take the wealth. The word 'samsrishti' should not be read into the next clause. Therefore, one living in reunion also takes the wealth, and if it is asked who it is, it is said that he is one born of the same blood and semen, *i.e.*, a uterine brother. By this portion of the text the right of a uterine brother though not reunited is established. Thus both these, having the right to take the wealth, are declared heirs. The same is the meaning of the reading '*Nányodharadanam haret*' found in Kalpataru. '*Anyodharadanam*' means 'the wealth of a brother by a different mother'. The meaning is that a half-brother not reunited shall not take the wealth of his half-brother reunited. But others think the meaning according to the above reading is clear.

Kátyáyana says: 'Of brothers, the reunited inherit to the reunited and the disunited to those disunited, in default of the wife,

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[1] Found in Nárada, XIII. 25—27. [2] Yájñavalkya, II. 138.
[3] Yájñavalkya, II. 139.

etc., of the deceased; for they inherit to each other if they have no issue".[1] *Commentary*—When reunited brothers die, reunited brothers inherit; when disunited brothers die, disunited brothers inherit. 'Above' means 'in default of the wife, etc.'. *Nirbijanyonyabhâginah'* is a Dvandva compound.

Brihaspati says: "He is said to be reunited who having made a partition lives again out of affection with joint property in the same house with his father, his brother or his paternal uncle".[2] *Commentary*—The particle '*va*' indicates the existence of other alternatives. Thus even where after partition with his paternal uncle's son, he lives again with him in this manner, he is recognized all the world over as a reunited coparcener. Prákásakára, however, says that on the strength of this text reunion is not permitted among others than those here mentioned.

Here ends the chapter on "Partition after reunion".

CHAPTER XXXVI.

On the determination of the fact of Partition.

On this subject, Nárada says: "Should the fact of a legal partition among coparceners be doubted, the determination of the point rests on the evidence of kinsmen, the partition deed and the doing of business severally by them. Among undivided brothers the performance of religious duties is single; but where a partition had been made they have to perform these duties, every one for himself. Gifts, receipts, cattle, food, houses, lands and servants should be regarded as separate among divided brothers, as also cooking, religious duties, receipts and disbursements. Giving evidence, becoming a surety, giving or taking (money) may be performed by divided brothers but not by undivided brothers. Those brothers who perform their duties with their individual wealth should be regarded as divided even in the absence of a document".[3] *Commentary*—'*Vibhágadharmah*' means 'the fact of partition'. When it is doubted, *i.e.*, when it is not known whether it has been made or not, it should be determined by the kinsmen of the coparceners. 'Deed of partition' means 'the document evidencing partition'. 'Doing of business severally by them' means 'from the fact of their keeping separate accounts of receipts and disbursements, etc.'. 'Religious duties' means 'Vaisvadeva and other rites to be performed'. '*Agama*' means 'income'. '*Vyaya*' means 'disbursement'.

Yájñavalkya says: "When the fact of partition is denied, the truth of it must be ascertained by the evidence of kinsmen, near

[1] Not found.
[2] Brihaspati, XXV. 72.
[3] Nárada, XIII. 38, 39 and 40.

or distant, by written record, and by separate transactions in respect of houses and lands".[1] *Commentary*—'*Yautaka*' means 'divided' according to the meaning of the root '*yu*', *i.e.*, to mix.

Again the same author says: "Among brothers, among husband and wife, and also among father and son, standing surety, borrowing and giving evidence are declared inadvisible where they are undivided".[2] *Commentary*—The word '*Parasparam*' (mutually) should be read into the text. Although Ápastamba points out that there is no possibility of a partition between husband and wife, still seeing that according to the text 'if the shares are made equal, then the wives also must be allowed to have equal shares', Yájñavalkya could have contemplated a partition between the husband and the wife, and spoken of the husband and the wife in view to such cases; thus, there is no inconsistency.

Brihaspati says: "Those who keep their receipts and disbursements and wealth separately and lend money or trade mutually are mutually divided".[3] *Commentary*—'*Parasparam*' means 'without acting together'; or in effect, independently of each other. The word '*pritak*' at the beginning of the first verse should be read along with the second verse also.

Here ends the chapter on the determination of the fact of partition.

CHAPTER XXXVII.

On Rights of Coparceners after Partition.

On this subject, Nárada says: "If many persons descended from the same ancestor are separate in the performance of religious duties, their business transactions and their working utensils do not act together".[4] *Commentary*—This contemplates the case of many descended from the same person. '*Pritakdharmáh*' means 'performing their sacrifices, etc., separately'. '*Pritakkriyáh*' means 'having separate dealings, such as lending money, etc.'. '*Pritak-karmagunopetah*' means 'separately engaged in protecting children, agriculture, service, etc.'. *Karmeshusaiyatah*' means 'acting together'.

The same author says what result flows from this state of things: "They may give away, or even sell, or do anything they please with their shares. They are masters of their own wealth".[5] *Commentary*—The word *all* occurring in the text should be restricted in its signification agreeably to other texts. The various texts from Brihaspati and others quoted in the chapter on

[1] Yájñavalkya, II. 149.
[2] *Ibid* II. 52.
[3] Brihaspati, XXV. 92.
[4] Nárada, XIII. 42.
[5] Nárada, XIII. 43.

"withholding of gifts" should be remembered in this connexion as they narrow the scope of this text.

Brihaspati says: "Whatever share a man has been enjoying shall not be changed from him. Should one, having made a partition, contest it subsequently, he shall be fixed by the king to his own share and shall be chastised if he persisted in the contention".[1] *Commentary*—Whatever share has been enjoyed by one who entered into a partition of his own free will shall alone be his share. All the rest of the verse only emphasises the principle.

Here ends the chapter on the rights after partition.

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[1] Brihaspati, XXV. 94 and 95.

VIVADA CHINTAMANI.

Partition of Heritage.

Here Manu thus states the primary period of partition: "Let the brothers assembling after the father and the mother divide equally the parental wealth. For they are powerless while they are alive."[1] Samam] equally. The purport is that there is no deduction of a twentieth part, &c. Nor can it be asked how equality of shares is ordained, seeing that the deduction of a twentieth part, &c., is spoken of by Manu only after premising partition among sons after death of parents; for that text relates to the eldest son possessed of good qualities, or to the eldest son wishing for the deduction of a twentieth part.

As partition of the wealth over which the father has independent power can take place only at his choice so long as he is alive, it may be that partition of that can be after his death: but how could it be said that it can be only after the mother's death, seeing that the mother has no ownership therein? Nor can it be urged that it should be so according to the text of Sankha who, after premising partition, says: "They are not independent who have their father living and so while their mother is living";[2] because this text is meant to eulogize a mother possessing good qualities; for a reference to one who has no ownership is illogical.

Should this be urged we reply, not so. By the ekasesha compound 'paitrika', the wealth of the mother is also connoted, and this text enjoins the waiting for the mother's death only in respect of her wealth.

Now, if it be urged that the text of Nárada: "When the father is dead, let the sons divide the father's wealth, and let the daughters, and in default of them, their issue, divide the wealth of the mother,"[3] lays down the right of the daughters, and in default of them, of their issue alone, to take the wealth of the mother, and that, therefore, the son has no right of succession, it is not so; for this text does not negative the right of others than those mentioned. Hence alone, Manu also ordains their taking together by the text: "When the mother is dead, let all the uterine brothers equally divide the mother's wealth as also the uterine sisters."[4] Thus, the wealth over which the father has independent power

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[1] Manu, IX. 104.
[2] II. Cole. Dig., 199, VII.
[3] Nárada, XIII. 2.
[4] Manu, IX, 182.

should be divided when the father is dead; but if he be alive, it should be preserved. This has been stated by Sankha: "Partition of wealth does not take place if the father be unwilling, but it takes place if he be old, perverse in mind or diseased." [1] Perverse in mind] disturbed in mind. It will be said that if he be competent and alive, partition takes place only at his choice.

Or when the father is dead, let the brothers live together under the control of the eldest. That Manu says: "But let the eldest alone take all the parental wealth, and let the rest live in dependence on him as upon their father." [2] Or let them live under whomsoever is competent. So Nárada says: "Or let the elder brother protect all the rest if willing, like the father; or let the youngest, if competent, do so; for the maintenance of the family depends on ability." [3] Or let them divide for the sake of religious duties; so says Manu: "Or let them thus live together or separately from love of religious duties; religious duties increase if they live separate; therefore partition is lawful." [4] If it be asked how religious duties increase by partition, Brihaspati says: "Of persons living in commensality, the worship of the manes, the gods and the Bráhmins is single. But if they are divided, the same will take place in every house." [5] Religious duties increase by partition by each coparcener performing sacrifices, &c., at his own choice alone independently of other coparceners with the divided wealth exclusively his own.

Now, partition among sons during the lifetime of the father. On that subject, Nárada having stated that the father should separate his sons, adds: "When the mother's menstruation has ceased and the sisters have been married and when the capacity for sexual intercourse has ceased and when the father has lost all desires." [6] Prattásu] married. Ramané] capacity for sexual intercourse. Has lost all desires] for worldly objects.

Yájñavalkya says: "If the father institutes a partition, let him separate his sons at his pleasure, giving the eldest the best share, or making all the sons equal sharers." [7] This choice is in respect of his self-acquisition. So Vishnu says: "If the father separates his sons, he may do as he likes in respect of his self-acquired property." [8] Svayamupáttam] self-acquired. Similarly, also, as to property recovered, conformably to the text of Manu. There, the fact of the non-injury to the paternal wealth is material. But the wealth acquired by using the paternal wealth is certainly common. Thus the father alone is the lord in making equal or unequal partition, or in making no partition at all of the wealth acquired by him without using ancestral property. On the strength of his choice, that is the proper partition; and the powerlessness of

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[1] Not found.
[2] Manu, IX. 105.
[3] Nárada, XIII. 5.
[4] Manu, IX. III.
[5] Brihaspati, XXV. 6.
[6] Nárada, XIII. 3.
[7] Yájñavalkya, II. 114.
[8] Vishnu, XVII. 1.

the sons is also only in respect of such property. So Manu says: "Whatever ancestral wealth a father acquires which was not recovered before, he need not, if unwilling, divide with his sons, that being self-acquired."[1] The meaning is that both in respect of the ancestral wealth seized by strangers and recovered by the father and of his own self-acquisition, the sons share only at the choice of the father and not if he be unwilling. Accordingly, a text says: "In property seized from the grandfather and recovered by the father by his own ability and also in property acquired by learning, valour, &c., the father's ownership is declared. He may, at his option, make a gift or partition of it. In default thereof his sons are declared equal sharers."[2] Hritam] seized by others and not recovered by the grandfather from inability. Of such property and in what is acquired by the father by learning, &c., his wish alone is material in making a partition or a gift. Thus partition, gift, etc., take place at the choice of the father, of property acquired by learning and by valour or other means without the use of ancestral wealth, and of property recovered similarly. It is only in respect of such property that the father has a choice to give the eldest son a greater share or taking a greater share for himself, and it is only in respect of such wealth that equality of shares is ordained by Yájñavalkya; for the text: "If the father institutes a partition, he may at his choice separate his sons, either giving the eldest the best share or by making all equal sharers", applies only to wealth over which the father has independent power.

Here, the same author states a distinction in case equal shares are given: "If he makes equal shares, the wives to whom no stridhana had been given either by the husband or by the father-in-law should be made equal sharers."[3] Here as the father is at the commencement represented as making the partition, it should be inferred that the relationship of wife refers to him. Equal sharers] those to whom no stridhana had been given must be made by the husband as rich as those to whom stridhana had been given. But when he takes a larger share for himself and gives the sons only a little, then he must give the wives the required wealth out of his own share. Hence alone it is that separate allotment is ordained only in case he makes the shares equal, by the text: "If he make the shares equal."

Hárita says: "He may divide a small portion and take most of the wealth himself. Should he grow indigent, he may take the shares from them."[4] 'Upadasyet' means 'grow indigent'. This text also applies to self-acquisition. "The father making a partition may take two shares."[5]

Sankha and Likhita say: "If he have only one son, he may take two shares and one more of bipeds and quadrupeds. The bull

[1] Manu, IX. 209.
[2] Brihaspati, XXV. 12 and 13.
[3] Brihaspati, XXV. 12 and 13.
[4] Yájñavalkya, II. 115.
[5] II. Cole. Dig., 205, XXIII.

shall be given to the eldest and the house to the next younger, except the residence of the father."[1] Thus the father takes two shares and one, the best of servants and the best of all the cows; one bull to the eldest possessing good qualities and a house other than the father's residence to the youngest possessed of good qualities should be given. The father's taking two shares obtains where he has an only son; for it is conducive to brevity to postulate one original text as the source of both these texts. This text applies to the property of the father other than self-acquired; for in respect of self-acquired property partible at his pleasure, the condition of 'having an only son' serves no purpose. The word 'eka' denotes the eldest and does not denote the singular number. Otherwise, the terms 'the eldest' and 'the youngest' would be contradictory. Therefore, the eldest and the youngest possessing good qualities should be allowed the alleged deductions. The other sons have equal shares in the wealth. The father also gets his own deduction, *i.e.*, two shares. This is, in short, the law.

Ápastamba says: "Having satisfied the eldest with the best of the chattels, the father while living may divide the wealth equally among his sons."[2] The word 'living' is to show that the widow of the deceased has no share, but that his share goes to the son, from the text: "The father's self becomes the son" and other texts. The Ratnákara reads 'while living'; but that is incorrect; for the fact of his being alive being evident from his making the partition, the word is superfluous. 'Ekadhanena' means 'with the best of all the chattels.'

Regarding seniority, Devala says: "As regards the lower castes, seniority is inferred from good conduct; among twins, by seniority of birth. Among twins, seniority vests in him whose face the relatives and the parents see first."[3] The meaning is that he whose face they see first, continues the line, that he satisfies the manes and possesses seniority. Therefore, the first male issue of the father is the eldest, born of a wife equal in class to her husband, though subsequently he is the eldest. That has been stated by Manu: "Of sons born of women of equal class without distinction, there is no seniority according to mothers; but the seniority is according to birth."[4] The meaning, therefore, is that where the wives are of different castes, the son of the wife equal in caste with the husband, though subsequently born, is the eldest. Accordingly, the text says: "The eldest son who, out of avarice, cheats the younger brothers ceases to be the eldest, becomes portionless and should be chastised by kings."[5] Manu says: "The deduction in favour of the eldest is a twentieth and the best of all the chattels; half of that to the middlemost, and a fourth to the youngest."[6] Accordingly, "Of all the valuable chattels, the eldest shall take the

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[1] II. Cole. Dig., 216, XLIII. and XLIV.
[2] Ápastamba, II, 6, 13. 13.
[3] II. Cole. Dig., 231, LXV.
[4] Manu, IX. 125.
[5] *Ibid*, IX. 213.
[6] *Ibid*, IX. 112.

best; and also the most excellent item of property, and the best of every ten." [1]

Baudháyana says: "The eldest shall take one of every ten as his deduction. The rest shall divide equally. All the sons are heirs to the father's wealth and certainly share equally; and of them, he who combines learning and good conduct deserves to get more." [2] The purport is that the twentieth portion is allowed where the eldest is surpassingly good in qualities; but that where he possesses good qualities, something and not much should be given to please him.

Devala says: "A tenth part should be given to the eldest, righteous in conduct." [3] This text applies, according to Haláyudha and Párijáta, where the eldest maintains the fire and is versed in the Vedas and where the rest are devoid of good qualities.

Brihaspati says: "Those to whom equal, greater or smaller shares had been allotted by the father should respect that allotment. Otherwise, they become degraded." [4] This text applies to property acquired by the father.

Manu says: "Where undivided brothers improve property by common exertion, the father shall not on any account make an unequal division thereof." [5] This text applies to property acquired by the brothers by similar modes of activity. There is thus no inconsistency.

Brihaspati says: "The eldest by birth, learning and good qualities, shall obtain two shares out of the heritage. The rest share equally, for he is like a father to them." [6] This applies to the eldest who being possessed of good qualities protects the rest like a father. Accordingly, the text says: "All the sons take the wealth of the father and certainly share equally; and of them he who combines learning and good conduct deserves to get more." [7]

Vyása says: "Where one acquires property by valour, &c., by using any common property, such as carriage or weapon, his brothers are entitled to share in it. It should be known that he has two shares and that the rest share equally." [8] By valour, &c.] by any ordinary means or by the use of joint property. The meaning is that the acquirer takes two shares in property so acquired.

Vasishtha says: "Of these, whoever acquires property by his own exertion takes two shares." [9] This is also explained as the previous text.

Yájñavalkya says: "Where common wealth is improved, partition of that is declared to be equal. But of sons of different fathers,

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[1] Manu, IX. 114.
[2] Baudháyana, II. 2, 3, 6 and 7.
[3] II. Cole. Dig., 215, XLI.
[4] Brihaspati, XXV. 4.
[5] Manu, IX. 215.
[6] Brihaspati, XXV. 9.
[7] Not found.
[8] II. Cole. Dig., 281, CX.
[9] Vasishtha, XVII. 51.

the allotment of shares is according to the fathers." [1] The meaning is that where one of the heirs improves common property by agriculture, trade, &c., he does not even then obtain a larger share. But this holds where the others also are similarly engaged. Otherwise it should be noted this would conflict with the text of Vasishṭha. Different fathers, &c.] if many sons of undivided deceased brothers individually improve the common property by agriculture, &c., then they do not, like their fathers, take each a share; but all the sons born of the same father take together only their father's share; this is the meaning.

Nárada says: "He, who being engaged in the affairs of the family transacts them, should be propitiated by his brothers with food, raiment and carriage." [2] The meaning is that he who being engaged in family affairs improves the common property by agriculture, trade, &c., obtains an equal share with other heirs, and should, in proportion to his trouble, be given in addition food and raiment out of the wealth.

Manu says: "If one among the brothers does not wish for his share of the wealth, being competent to earn by his own ability, he should be separated by giving him some trifle for maintenance." [3] He who being competent to live by his own occupation does not wish for a share of the common wealth but renounces it, should be given a portion by contribution from their own shares by brothers who had taken their shares. Haláyudha says that the text of Nárada, previously quoted, bears the same import. But Prakásakára has explained this text of Manu to mean that he who expends his time in indolence, &c., while his coparceners are busy engaged in earning wealth, should be kept out of the wealth so earned by such exertion and should be made to share only in the capital.

Kátyáyana says: "When an undivided younger brother is dead, let the rest make his son who had not at all obtained means of livelihood from the grandfather sharer of the heritage. He shall obtain his father's share from his paternal uncle or from his son. The same share shall belong according to law to all the brothers, and even his son shall obtain it. Beyond that succession stops" [4] Anuja] brother. His son] son of the brother. Means of livelihood] share. If asked what share he obtains, the author replies, "his father's share". His son] the grandson of the man whose wealth is partitioned. Thus the wealth of the householder should be divided *per capita* among the sons. The share of each son should be taken by him or by all his sons. Beyond that, &c.] the meaning is that it shall not be taken by his great-grandsons. This applies where they live together. Thus the wife of the deceased obtains no share; for she is not mentioned.

Devala says: "Of members of the same family living together, whether divided or undivided, there shall again be a partition of the

[1] Yájñavalkya, II. 120.
[2] Nárada, XIII. 35.
[3] Manu, IX. 207.
[4] II. Cole. Dig., 241, LXXIX.

heritage till the fourth in degree. This is settled." [1] The right of sharing in heritage extends to four degrees, beginning with the owner of the wealth. This rule applies also to divided coparceners living together in reunion, &c., because the text uses the expression 'living together'. Vasishtha says: "Now partition among brothers to await until childless wives beget sons." [2] The word 'brothers' should be read along with 'wives'. The meaning accordingly is that share should be allotted to the brother's widow of doubtful pregnancy; that that share should go to her son if she begets one and that if no son is born, that share should be taken only by her husband's brother, &c. Brihaspati, after speaking of the father, says: "In default of him the mother takes a share equal to that of a son. The mothers take equal shares with them and the daughter takes a fourth share." [3] In default of him] in default of the father. Mother] mother having sons. Mothers] step-mothers having no sons. The meaning is that all these take shares equal to that of a son. The unmarried sisters of these coparceners take a fourth share for the expenses of their marriage.

Nárada says: "But those for whom the sacraments had not been duly performed by the father should have their sacraments performed by their brothers from the paternal wealth; or, if there be no paternal wealth, the sacraments of these brothers must necessarily be performed with contributions from their own shares by brothers for whom the sacraments had been already performed." [4] Sacraments] ending with upanayanam. Vyása says: "The wives of the father who have no sons are declared entitled to equal shares; and all the paternal grandmothers are pronounced equal to mothers." [5] Yájñavalkya says: "Of sons dividing after father's death, even the mother takes an equal share." [6] Kátyáyana says: "Wealth concealed by any one, his brothers having re-assembled shall divide equally with him; and even in default, their sons. Bhrigu says, that wealth concealed from one another, as also what has been improperly divided or subsequently obtained, the heirs shall divide in equal shares. If one leaves the common land and goes to another country, a share should doubtless be given to his progeny when they return. Whether he be the third, the fifth or even the seventh, he shall, if his birth and name are known, obtain the share duly descending to him." [7] This applies to one who has gone to a distant land. A text says: "Land should be surrendered by gotrajás (kinsmen) to the progeny of a person whom the old inhabitants of the village and the neighbouring people know by tradition to be the owner." [8]

Persons excluded from Inheritance.

On this subject Brihaspati says: "A son devoid of good qualities, though born of a wife equal in caste, is not entitled to the

[1] II. Cole. Dig., 242, LXXXI.
[2] Vasishtha, XVII. 41.
[3] Brihaspati, XXV. 64.
[4] Nárada, XIII. 33 and 34.
[5] II. Cole. Dig., 243, LXXXIV.
[6] Yájñavalkya, XII. 123.
[7] II. Cole. Dig., 485, CCCLXVII.
[8] Brihaspati, XXV. 26.

paternal wealth. The wealth is ordained to go to his sapiṇḍas who are srotriyas." [1] Manu says: "All brothers that are addicted to a wicked course are not entitled to wealth." [2] Vikarmasthâh] engaged in forbidden acts. Sankha says: "An apapátrita has no right to inheritance and oblations of food or water." [3] An apapátrita is one who has been put out of caste by his kinsmen for very heinous sins by the ceremony of breaking the pot. The meaning is that one such has no right to inherit the paternal wealth or perform sráddha and tarpana. Manu says: "The impotent and the outcast are excluded from shares; so also those blind and deaf from birth. So the insane, the idiot and the dumb, as also those who are wanting in an organ. But to all these, it is fair that food and raiment should be given for life by the intelligent. He who does not give becomes degraded. Should the impotent, &c., anyhow wish for wives their issue, if begotten, deserves the heritage." [4] Nirindriyâh] wanting in hands, feet, &c. The meaning is that those who are not competent to perform karma enjoined by Srutis and Smritis do not deserve the heritage; but their sons, &c., except the son begotten by the outcast deserve it. Yájñavalkya says: "The outcast, his son, the impotent, the lame, the insane, the idiot, the blind and those suffering from incurable disease should be maintained, but do not take shares. (Persons suffering from incurable leprosy, &c., are not worthy of the heritage). But the aurasa and the kshetraja sons of these, if blameless, take shares. The daughters of these should be maintained till they are married." [5] The aurasa sons of the outcast here meant are only those who were born before he became an outcast; but the aurasa sons of the blind also include his sons born after he became blind. Sutâh] daughters. Bhartrusátkritâh] married. Regarding the wives of the impotent, &c., the author says: "The sonless wives of these of good conduct should be maintained. Those that are unchaste, as also those that are adverse, should be expelled from homes." [6] Of these] of the impotent, etc. Adverse] administering poison, &c. Nárada says: "The enemy of the father, the outcast, the eunuch, and one guilty of sins shall not obtain a share even though they are aurasa sons. How could they if they are kshetrajas?" [7] Enemy of the father] one who beats his father while alive and is averse to perform his sráddha, &c., after his death. "Those suffering from chronic and acute diseases, the idiot, the insane, the blind, and the lame should be maintained in the family, but their sons take shares." [8] Chronic] consumption, &c. Acute] leprosy, etc. The idiot] one having no discernment. Devala says: "When the father is dead, the impotent, the leper the insane, the idiot, the blind, the outcast, the son of the outcast and the lingi do not share in the heritage. To them, except the outcast, food and raiment should be given. Their sons, free from

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[1] Brihaspati, XXV. 42.
[2] Manu, IX. 214.
[3] II. Cole. Dig., 423, CCCXVIII.
[4] Manu, IX. 201—203.
[5] Yájñavalkya, II. 140.
[6] *Ibid*, II. 142.
[7] Nárada, XIII. 21.
[8] *Ibid*, XIII. 22.

defect, shall obtain their father's share of the heritage."[1] If dead] is used illustratively. Lingi] one who fraudulently makes a show of observing vows. The defect produces unfitness to inherit. Vasishtha says: "Those who have entered another order take no shares." Another order] than that of the householder. Kátyáyana says: "A son born of a wife married in violation of the rules and one born of a wife of the same gotra and one who after becoming a Sanyásin reverts to the order of a householder do not on any account take the wealth."[2] Marriage in the order of castes is legal. The son born of a woman married in violation of that and of a woman of the same gotra with her husband and so one who having entered the order of a Sanyásin becomes degraded from that, these are unworthy of shares. This is the meaning. Regarding the first of these, the same author states a distinction: "If the son born of a wife married in violation of the rules be of the same caste with the father he takes the wealth."[3] The meaning is that the son born of a wife married in violation of the law obtains a share if of the same caste with the father.

This is the summary. One addicted to vicious course, one expelled from caste for heinous crimes, the outcast, the impotent, persons suffering the defects of incurable blindness and deafness, insanity, idiocy, dumbness, want of hands, feet, &c., leper, enemy of the father, the consumptive, one who greatly pretends to observe vows, one who has entered another order, all these are unworthy of shares. The sons of these, except those begotten by the outcast, certainly take shares if free from defects making them unfit to share in the heritage.

Initiation of Persons Uninitiated.

On this subject, Vyása says: "But the brothers who have not been initiated should be initiated by their elder brothers from the paternal wealth, as also unmarried daughters."[4] Nárada says: "Where there is no paternal wealth, the sacraments of the brothers must necessarily be performed by brothers already initiated even by contributing from their own shares."[5] Yájñavalkya says: "Brothers uninitiated should be initiated by brothers already initiated. So also the unmarried sisters by giving them a fourth part of their own shares."[6] Manu says: "The brothers should separately give from their own respective shares a fourth part to the unmarried sisters. Those who refuse to give shall become degraded."[7] The meaning is that the brothers should take from their own shares and give to the unmarried sister a fourth part of the share of a brother of the same caste with the sister. Here the giving of a fourth part is not compulsory. But so much shall be given as is requisite for the performance of the sacrament; for Vishṇu says:

[1] II. Cole. Dig., 426, CCCXXI.
[2] *Ibid*, 439, CCCXXXVII (i).
[3] *Ibid*, 437, CCCXXXVII (ii).
[4] II. Cole. Dig., 297, CXXV.
[5] Nárada, XIII. 34.
[6] Yájñavalkya, II. 124.
[7] Manu, IX. 118.

"Let one perform the marriage of his unmarried sisters according to his means."[1] Ratnákara and others also are to the same effect.

Partible Property.

Here Kátyáyana: "What belonged to the grandfather, what belonged to the father, and what is acquired by themselves, all this shall be divided at a partition among coparceners."[2] Acquired by themselves] with the aid of the paternal wealth. Nárada says: "What remains after making the gifts promised by the father and discharging the father's debts shall be divided among brothers, so that the father may not continue a debtor."[3] Pitridáya] what the father has agreed to give. The meaning is that what remains after paying the debts of the father should be divided.

Next impartible property. On this subject Manu says: "Whatever wealth has been acquired by learning by any one, belongs to him alone, as also present from a friend, wealth received at marriage and wealth received with madhuparka."[4] Maitriyam] obtained on the score of friendship. Wealth received at marriage will be subsequently described. Madhuparkikam] whatever has been obtained as a mark of respect at the time of madhuparka. Manu and Vishnu say: "What has been acquired with effort without the aid of the paternal wealth or by one's own pursuit, one need not give, if unwilling."[5] Effort] service. Pursuit] agriculture, &c. This is only illustrative. The meaning is that whatever is acquired by one without the aid of the common property becomes the acquirer's exclusive property. Vyása says: "Whatever has been given to any one by one's paternal grandfather or by one's father with affection, as well as what has been given by one's mother shall not be taken away from him."[6] Similarly, "Whatever wealth one acquires by his own ability without using the paternal wealth one need not give to his co-heirs, as well as what is gained by learning."[7] The meaning is that wealth acquired without the use of the common wealth and wealth acquired by learning, these two are impartible. Prakásakára says that only such gains of learning as have been acquired without the aid of the common wealth are impartible. That is unsound; for then the enunciation of these two conditions would be meaningless. Ratnákara and others also are to the same effect.

From the text of Nárada: "The learned shall not, if unwilling, give to the unlearned a share out of his own wealth, if that was not acquired by him with the aid of the paternal wealth,"[8] it is established that wealth acquired though by learning with the aid of the paternal wealth is certainly partible. If this be urged, it is true; but this applies where use was made of the common wealth in

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[1] Vishnu, XVIII. 35.
[2] Cole. Dig., 478, CCCLXVIII.
[3] Nárada, XIII. 32.
[4] Manu, IX. 206.
[5] Manu, IX. 208; Vishnu, XVII. 42.
[6] II. Cole. Dig., 450, CCCLIVI.
[7] *Ibid.*
[8] Nárada, XIII. 11.

acquiring learning as in acquiring wealth. Hence alone, where learning was acquired without such use, Kátyáyana without considering whether there has been any use of the common-wealth or not in acquiring the wealth says that it is impartible: "When one acquires learning from a stranger while receiving a foreign maintenance, the wealth acquired by such learning is called the gains of learning."[1] From a stranger] from somebody not his kinsman. That is stated by the same author: "Of those who have acquired learning within the family, from the brothers or the father, wealth acquired by such learning and by valour is partible, as Brihaspati declares."[2] 'Learning' here means, skill in weapons and Sastras. The meaning, therefore, is that the brothers have a share in the wealth which one, having learnt the use of weapons and the Sastras from one's kinsmen, such as the father, acquires with such learning. "What is gained by proving superior learning, after a prize has been offered, must be considered as the gains of learning and ought not in general to be divided among co-heirs. So what has been received as a gift from a pupil, as a gratuity for officiating at a sacrifice, as a fee for answering a question in casuistry or for ascertaining a doubtful point of law, or for victory in a learned contest, or for reading the Vedas in the transcendent ability; such wealth have the gages declared to be the gains of learning and impartible; and the law is the same in regard to arts and to increase of price from superior skill in them. What is obtained by the boast of learning, Bhrigu calls the gains of learning."[3] Arthijyatah] from decorations presented with a request to officiate. From a question] either asked by himself or asked by another and answered by him. For showing his knowledge in ascertaining a doubtful point: for superior skill in reciting the Vedas; wealth acquired from a disciple is also like wealth acquired by learning, because much learning is required. Where every costly article is sold to the purchaser by the seller for a trifling price on account of learning, even there a larger share is the purchaser's exclusive property. Boast of learning] the assertion 'I alone know this science'. Kátyáyna says: "Gains of learning shall not, on any account, be given by the learned to the unlearned; but that wealth should be given by the learned to those equally or more learned."[4] Here, the fact of having equal or greater learning is not the direct cause of the gift. For if it were, the text would contemplate some invisible consequence. But the mixing up of the wealth acquired by them is the cause. Kátyáyana says: "He who maintains the family of a brother engaged in acquiring learning shall obtain a share of the wealth acquired by such learning, though himself unlearned."[5]

The gist in brief is this: the wealth acquired by a person by skill in the Sastras or in the sword acquired from a stranger while being maintained by one not his kinsman, his family not having

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[1] II. Cole. Dig., 444, CCCXLVII.
[2] *Ibid*, 448, CCCXLIX.
[3] II. Cole. Dig., 444, CCCXLVII.
[4] *Ibid*, 449, CCCL.
[5] Found in Nárada, XIII. 10.

been maintained by the co-heirs during the period of his acquisition of such learning, though such wealth be earned by use of the common property is called the gains of learning and is impartible.

The same author states what kind of property acquired by valour is impartible: "When favour is shown by a leader, pleased with a gallant action which a soldier performs, well knowing his danger; whatever is then received shall be considered wealth gained by valour; that and what is taken under a standard are declared to be impartible; what is taken in war, after routing the force of the enemy, by a soldier who risked his life in the service of his master, is named wealth taken under a standard."[1] The same author states what wealth received at marriage is impartible: "What is received with a damsel equal in class, at the time of accepting her in marriage, let one consider as wealth received with the maiden; it is deemed pure and conducive to prosperity; but let him know that to be received on account of marriage, which is accepted by him with his bride: all such wealth is considered as auxiliary to the performance of virtue."[2]

Now the allotment of shares: "If wealth be acquired by the joint exertion of all the unlearned persons, it is settled that partition of that is equal, where it is not paternal."[3] Exertion] agriculture, &c. Equal] no wise unequal. Therefore, the deduction of a twentieth, &c., also does not there obtain. Speaking of self-acquisition, Gautama says: "The unlearned shall divide equally."[4] Vasishtha says: "He among these by whom the wealth was acquired shall obtain two shares."[5] If among many brothers, one with the aid of the common wealth acquires wealth by agriculture, &c., two shares shall be allotted to him and one share alone to the rest. Vyása says: "If one acquires wealth by valour, &c., with the aid of the common property, such as carriage, weapon, &c., all brothers are sharers therein. Two shares should be given him; the rest take equal shares."[6] As the word 'ádi' denotes the mode and as the Bahuvríhi compound here includes the first term, learning acquired by use of the common wealth is also included. Nor could it be urged that this conflicts with what has been previously said, *i.e.*, that wealth acquired by learning, valour, &c., even without using the common wealth is impartible; for that applies to learning and valour defined by Kátyáyana. But this applies only to that acquired by learning, acquired otherwise than by the learning defined by Kátyáyana. Now, as partition of stridhana has to be discussed, the definition of stridhana is first stated. That is explained by Manu and Kátyáyana: "What is given before the fire, what is given at the bridal procession, what is given out of affection to the woman, and what is given by the father, mother or brother, are declared to be the six kinds of stridhana (woman's property)."[7] Six kinds] the

[1] II. Cole. Dig., 465, CCCLX.
[2] *Ibid*, 463, CCCLVIII.
[3] Manu, IX, 205.
[4] Gautama, XXVIII. 31.
[5] Vasishtha, XVII. 51.
[6] II. Cole. Dig., 281, CX.
[7] Manu, IX. 194; II. Cole. Dig., 584, CCCLXII.

expression is intended to show that they are no fewer. Regarding three of these, Kátyáyana says: "What is given to women at the time of marriage before the fire is declared by sages to be stridhana given before the fire."[1] Is given] by anybody, there being no limitation. Accordingly, "That again which a woman obtains while being conducted from the parent's house is declared to be stridhana given at the bridal procession."[2] The meaning is that whatever is obtained from anybody while leaving the parent's house is called wealth obtained at the bridal procession. So "Whatever is given out of affection by the mother-in-law or the father-in-law for a woman prostrating at their feet is called wealth acquired by beauty."[3] Beauty] good behaviour, skill, etc. The meaning thus is that what is given by the father-in-law to a woman prostrating at his feet or well-behaved, etc., is the third kind of stridhana. The three sorts, given by the mother, etc., are clear. Wealth given as a recompense for supersession is the seventh. That is stated by Yájñavalkya: "To a woman superseded, let one give an equal amount as a recompense for the supersession if no stridhana had been given to her. But if it had been given, a half is ordained."[4] By the husband marrying a second wife, his first wife becomes superseded. What is given to her by the husband at the time of supersession is called money given for the supersession. Vishṇu says: "Whatever is given by the father, mother, friend and brother, what is obtained before the fire, what is given for supersession, the *sulka* and the *Anvádheyáka* are the different kinds of stridhana."[5] Of these, the first six have been explained. Regarding *sulka*, Kátyáyana says: "Whatever is obtained as the price of household utensils, carriage, milch cattle, ornaments and servants is declared *sulka*."[6] The meaning is: whatever is obtained by a woman from her husband, as incidental to the making of household utensils, etc., is called *sulka*: so "whatever is obtained by a woman from the family of her husband as well as from her own family subsequent to marriage is declared *Anvádheyáka*."[7] There are the various kinds of stridhana. This certainly is, what is called woman's saudáyika. Accordingly, Kátyáyana says: "Whatever is obtained by a married woman or a damsel from the house of her husband or her father or from her brother or parents is called saudáyika."[8] The word 'husband's' is also connected with "house". The word 'sardha' is an incorrect reading. 'Brother' is used illustratively. The meaning, therefore, is that what is obtained by a married or unmarried woman from her father or his family or from her husband or his family is called her "saudáyika". The allotment for maintenance that follows is an expansion of this. The same author thus states her power of disposal over it. "Having obtained saudáyika wealth women have independent power over it, because it was given them for maintenance out of

[1] II. Cole. Dig., 585, CCCCLXIV.
[2] *Ibid*, 585, CCCCLXV.
[3] *Ibid*, 586, CCCCLXVI.
[4] Yájñavalkya, II. 148.
[5] Vishnu, XVII. 18.
[6] II. Cole. Dig., 588, CCCCLXVIII.
[7] *Ibid*, 587, CCCCLXVIII.
[8] *Ibid*, 594, CCCCLXXV.

affection. The independence of women in respect of saudáyika is ever celebrated both as regards sale and gift even in respect of immoveables."[1] The meaning is that women have absolute power to make a gift, etc., even of immoveable property given by the husband's family. Regarding saudáyika, Ápastamba says: "Ornaments belong to the wife: some say the wealth of kinsmen also."[2] After 'wife's' 'property' is to be supplied. 'The wealth of kinsmen'] wealth received from kinsmen either from the father's family or the husband's at marriage, etc. Regarding ornaments, Manu and Vishnu say: "Whatever has been worn by the wife during her husband's life-time, the heirs shall not take. Taking, they become degraded." Medhátithi says that ornaments, etc., worn with the permission of the husband though not given by him become the property of the wife by that fact alone. In such property, moveable and immoveable obtained from the husband's family women have independent power to give or sell according to the text of Kátyáyana quoted before.

Nárada says: "Whatever was given by the affectionate husband to his wife, she may enjoy as she pleases even though he is dead or give it away, except immoveable property."[3] Thus women have independent power only over moveable property given by the brother and not over immoveable property also. Thus the rule in respect of saudáyika is settled.

Kátyáyana says: "Whatever was given by the husband, a woman may enjoy as she pleases, when he is dead; but when he is alive, let her preserve it or reside in the family (of the husband). A childless widow keeping the bed of her lord inviolate and engaged in (the performance of) vows, shall enjoy with moderation till her death; after her, the heirs take it."[4] What was given by the husband] the wealth of the husband; when he (the husband) is dead, there being no other heir, it becomes the wife's property; and when he is alive, it becomes the wife's property by his permission. Here, Ápastamba says: "Let a woman enjoy as she pleases property given by the husband, when he is dead."[5] This, however, relates to property other than immoveables. In the case of immoveables, he says: "Let her enjoy with moderation till her death; after her, the heirs take it." With moderation] not extravagant. The term 'childless, etc.', is a qualification conferring that power. As regards the other alternative, he says: "Let her preserve it, when he is alive." The meaning is: if the husband is alive, she shall preserve it. 'Otherwise, etc.', means that in case there is no property of the husband, the widow shall live in the family of the husband alone. Thus over the immoveable property of the deceased husband the widow has no independent power in the matter of giving, etc., because of parity of reasoning. Otherwise the question as to how it should be determined will remain

[1] II. Cole. Dig., 594, CCCCLXXV.
[2] Ápastamba, II. 6, 14, 9.
[3] Nárada, I. 28.
[4] Cole. Dig., 595, CCCCLXXVIII.
[5] Not found.

unanswered. Here also the apparent conflict in mentioning this in the chapter relating to saudáyika has been explained. Just as in the case of immoveable property given by the husband the widow has no power of gift, etc., even with the permission of the husband, so also in the case of immoveable property of the husband which has descended to the widow. The Prákasa and the Ratnákara are to the same effect. So also in the case of immoveable property of the son descended to her, because the same question arises there also and we do not hear of an express text on the point. On this subject, Devala says: "Maintenance, ornaments, *sulka* and gains are stridhana, that she may enjoy as she pleases; and the husband should not take it when in no distress."[1] Maintenance] money given for subsistence. Ornaments] decorations. *Sulka*] wealth given to a damsel for the purpose of marrying. Gain] received from kinsmen. Accordingly, "If one uselessly give or consume (the property), he should be made to return to the woman the property with interest. But he may take the woman's property to relieve a son in distress."[2] Uselessly giving and consuming the property should not be made without the consent of the woman; but these may be made to relieve a son. This is the meaning. He himself says that even when in no distress it may be taken with her consent. "If one enjoy it amicably, he shall be made to return the principal alone if he becomes rich. Whatever is given to the husband by a woman seeing him afflicted with disease, immersed in grief, and pressed by creditors, he may return as he likes."[3] The meaning is that what a woman gives out of her own property to the husband, etc., seeing him afflicted with disease, etc., the husband, etc., may repay at pleasure. Yájñavalkya: "What property of the wife is taken by the husband during a famine, for the performance of religious duties, while afflicted with disabling disease, need not be returned to the woman."[4] The term 'disabling' qualifies 'disease'. It means 'disturbing the performance of duties'. The meaning "is that what property of the wife was taken by the husband for the performance of indispensable religious duties which he cannot perform in any other manner (than by taking the wife's wealth), need not be returned". Kátyáyana states an exception to the rule. "If he, subsequently, become the husband of two wives and does not honour her, even what was given to him by her out of affection, he shall be compelled by violence to restore. Where suitable food, and raiment and dwelling are not provided for her, then she may take her own property and a just allotment. This is the law of Likhita; after receiving it she may reside in the family of her husband; but if she be diseased and in danger of her life, she may go to her kinsmen. A wife who is bent on doing malicious acts, shameless, destroying the wealth, and incontinent, does not deserve stridhana. Stridhana promised by the husband to the wife must be paid as a debt by the sons, if she resides in the family of her

[1] II. Cole. Dig., 597, CCCCLXXVIII.
[2] *Ibid.*
[3] II. Cole. Dig., 594, CCCCLXXV.
[4] Yájñavalkya, II. 147.

husband, but not if she lives in the family of her father."[1] 'Pays honour', etc., means that if the husband does not honour her even in proper time or does not give her proper food and raiment, then wealth given by the woman to him even for getting rid of the disease should be taken from him even by using violence. 'Having taken, etc.', means 'after receiving the wealth she should reside only in the house of her husband and should not go to the house of her father'. 'Engaged in malicious acts, etc.', means that the wealth of such a woman should be taken by kinsmen.

Partition of Stridhana.

Here, Manu: "After the mother, the uterine brothers and sisters should divide the maternal wealth in equal shares. To the daughters of these (sisters) something should be given out of affection according to their shares."[2] Equal] not unequal shares. Uterine brothers] born of the same womb. Sisters] unmarried sisters only. That is stated by Brihaspati: "Stridhana belongs to the issue and the daughter also shares in it, if unmarried; but if married, she takes something only of the maternal property."[3] To her issue] to her sons. Shares in it] equally, for there is no distinction made. Married] furnished with a husband. Something only] something in proportion to the property. Gautama: "Stridhana goes to daughters unmarried and unendowed."[4] Unendowed] this, according to the Ratnákara and others, means childless, having indigent husbands, and unfortunate. These, though destitute of issue, take the maternal wealth like sons. Manu: "The yautaka of the mother belongs to the unmarried daughter."[5] Yautaka] what is obtained from parents, etc., at the time of marriage. Vasishtha: "Let the daughters divide the nuptial presents of their mother."[6] Nuptial presents] mirror, combs, etc. Yájñavalkya: "The daughters share the wealth of the mother remaining after discharging her debts; in their default, the issue." The daughters divide the wealth remaining after clearing up her debts. In their default, their issue] the grand-daughter and grandsons, according to the text of Manu. This applies to the wealth obtained by the mother at her marriage in the Bráhma form, as furniture, etc. Kátyáyana: "In default of daughters, the wealth goes to the sons. What was given by kinsmen goes, in default of kinsmen, to her husband. Married sisters shall share with kinsmen. Thus the law relating to the partition of stridhana has been laid down."[7] 'In default of daughters, etc.'] the meaning is that the nuptial gifts, yautaka received at the time of marriage, and wealth given by the father, belonging to the mother, goes in default of her daughter, to the son. Wealth other than these goes, when she is dead, to the son and daughter together; this has been stated before. Given by kinsmen]

[1] II. Cole. Dig., 599, CCCCLXXXI, 602, CCCCLXXXIV & 601, CCCCLXXXIII.
[2] Manu, IX. 192 and 193.
[3] Brihaspati, XXV. 87.
[4] Gautama, XXVIII. 24.
[5] Manu, IX. 131.
[6] II. Cole. Dig., 605, CCCCXCII.
[7] *Ibid*, 607, CCCCXCIII.

what was given by persons other than the father belongs to both the brother and the sister; moreover, if unmarried, she takes an equal share. 'The sister, etc.', means that if she is married, she shall take only a very little portion. 'In default, etc.'] on failure of a daughter's son, etc., the wealth of the woman goes to her husband. Manu: "It is declared that the wealth of a deceased childless woman married in the forms denominated Bráhma, Daiva, Ársha, Gándharva and Prájápatya shall belong to her husband. But the property of a deceased childless woman married in Ásura and the other forms of marriage, is declared to go to the father and the mother."[1] Childless] destitute of children. Gautama: "The sister's *sulka* goes to the brothers after the mother; some say before her."[2] This refers to wealth obtained at the three forms of marriage, Ásura, etc. Baudháyana: "The property of a deceased maiden, the uterine brothers themselves shall take; in default of them, it becomes the mother's; in her default, it becomes the father's."[3]

PARTITION OF CONCEALED WEALTH.

On this subject, Yájñavalkya says: "When property withheld from co-heirs by one of them comes to light after division, the co-heirs shall divide it in equal shares; this is fixed."[5]

Kátyáyana: "Bhrigu has ordained that property withheld from one another, as also property ill-distributed and wealth acquired afterwards should be divided in equal shares. Whatever is enjoyed by one among the undivided co-heirs should not be changed from him".[6] In equal shares] in equal allotment, as previously stated. What is enjoyed] enjoyment of concealed property which is common. The meaning is that he need not pay.

PARTITION AMONG BROTHERS OF DIFFERENT CASTES.

On this subject Manu: "(The son of the) Bráhmiṇí (wife) shall take four shares, the son by a Kshatriyá wife three, the son by the Vaisyá two, and the son by the Súdrá woman one."[6] In the Mahábhárata, it is said: "The wealth of a Kshatriyá should be divided into 8 parts, O Yudhishthíra. The son by the Kshatriyá wife shall take four shares out of the paternal estate as also the implements of war which were possessed by the father. The son by the Vaisyá wife shall take three shares, and son of the Súdrá shall take the eighth portion (*i.e.*, one share). Likewise the wealth of a Vaisyá should be divided into five parts, O Chief of Bháratá! Four shares of the paternal wealth should be tken by the son of the Vaisyá wife. O Bháratá, a fifth portion (*i.e.*, one share) belongs to the son by the Súdrá wife."[7] This applies where the Bráhmin has four, the Kshatriyá three, and the Vaisyá two.

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[1] Manu, IX. 196 and 197.
[2] Gautama, XXVIII. 25.
[3] Not found.
[4] Yájñavalkya, II. 126.
[5] II. Cole. Dig., 485, CCCLXXVII.
[6] Manu, IX. 153.
[7] II. Cole. Dig., 308, CXLIII.

Implements of war] as horse, sword, etc. So also Vishṇu: "If there exist sons (of all the other castes) except the Súdrá son, then they should divide the wealth into nine shares. This applies even to the case of the Kshatriyá."[1] Brihaspati: "Land acquired by acceptance of gift should never be given to the son by a Kshatriyá wife; even if the father give it to him, the son of the Bráhmiṇí may take it from him when the father is dead."[2] Vriddha Manu: "Let the sons of the Bráhmiṇí take the land obtained by literature; but all the sons of the regenerate classes take the house, as also land regularly descended from ancestors."[3] Acquired by literature] obtained by acceptance of gifts for performing sacrifices and teaching. Sons of the regenerate classes] belonging to the three castes. Sankha: "The son of a Súdrá woman does not take any share. What his father may give him, that alone is his share. Let the father give him a bull and cow, black iron, black grains excepting sesamum."[4] Manu: "Whether he has sons or no sons, nothing more than a tenth part shall be given according to law to the son by a Súdrá wife. The son of a Súdrá wife does not take the wealth of Bráhmins, Kshatriyás or Vaisyás. Whatever the father gives him, that alone shall be his property."[5] Having sons] having sons of the three (regenerate) classes. Having no sons] destitute of such sons. Does not take the wealth] means, according to the Kalpataru, that he is not entitled to more than a tenth share even though the father was very much pleased with him. Párijáta says that the son by a married Súdrá wife, though he is possessed of very excellent qualities, does not take any share. Brihaspati: "The dutiful and virtuous son born of a woman of the Súdrá class to an issueless man shall receive maintenance; the sapiṇḍas shall take the residue."[6] Issueless] having no son of any of the three twice-born classes. Sapiṇḍas] those near; in default of them, those distant. This applies if the Súdrá woman is not married, for it is found in the chapter relating to unmarried woman. Manu: "The son of a Súdrá by a female slave or by a female slave of a slave, takes a share if permitted; thus is the law settled."[7] Yájñavalkya: "The son of a Súdrá by a female slave takes a share by (the father's) choice, when the father is dead."[8] The son of a Súdrá by an unmarried female slave gets a share at the choice of the father. But after the father he shall get half the share of a son born of the wife. Accordingly, "If he is brotherless, he shall take the whole, in the absence of the daughter's son".[9] The meaning is that if there are no sons or daughter's sons of a Súdrá by a married woman, the son by an unmarried woman takes the whole. Gautama: "The case of sons of the pratiloma class is similar to that of the son by a Súdrá woman."[10] A son begotten by a Súdrá on a woman of the Vaisyá

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[1] Vishṇu, XVIII. 6.
[2] Brihaspati, XXV. 30.
[3] II. Cole. Dig., 317, CLXII.
[4] *Ibid*, 323, CLXX.
[5] Manu, IX. 154 and 155.
[6] Brihaspati, XXV. 31.
[7] Manu, IX. 179.
[8] Yájñavalkya, II. 134.
[9] Do.
[10] Gautama, XXVIII. 45.

and the other classes, shall, like a son by a Súdrá woman, get maintenance, ploughshare and the like.

PARTITION OF SONS BORN AFTER PARTITION.

The son born after partition is of two kinds: he who was in the womb when partition took place, and he who was (conceived and) born after partition. Of the first, Yájñavalkya says: "The son born after partition of a woman equal in class is a sharer; or a partition may be again made of the present wealth corrected for both income and expenditure."[1] Is a sharer] is worthy of a share. Of the present wealth] of the wealth visible, or both visible and invisible. Income] subsequent acquisitions. Expenditure] subsequent expenditure. Corrected] *i.e.*, from the original wealth diminished by the subsequent expenditure and increased by the subsequent income.

Haláyudha says that this alternative has reference to the son good or bad in quality. Vishṇu: "The sons that are divided from the father should give a share to the son born after partition."[2] The meaning of this is similar to the previous one.

Of the second, Manu: "The son born after partition shall take the paternal wealth alone. Or he shall divide with such of the brothers as are reunited with him."[3] Just as a son who is in the womb when partition took place receives (a share) from the brothers, so the son (born after partition) does not receive (from them); this is indicated by the use of the word *alone*. But he takes only the share of the father. The special distinction is this. If he wants to get his share and the father is desirous to make partition, then the shares of the father and the son born after partition should be made in the father's wealth. But if the father be dead, his entire share belongs to the son born after partition. The meaning of the text is that if the father is reunited with his brother or his sons, and then dies, the son born after partition receives his father's share from them. Brihaspati: "The younger brothers of those who are separated from their father, whether born of co-wives or of the same mother, obtain their father's share. The son born before (partition) has no right to the father's property; and the son born after partition has no right to the wealth of the brothers."[4] 'Sons born after (partition)'] the meaning is that the sons born subsequent to partition, even if many in number, take their father's share. Born before] means, divided (with the father). Accordingly, "What is acquired by the father himself, divided from his sons, belongs entirely to the son born after partition; those born previous to partition are declared to have no claim. As in the wealth, so in the debts likewise, in gifts, mortgage and sale, they have no claims on each other, except for pollution and libations of water."[5]

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[1] Yájñavalkya, II. 122.
[2] Vishṇu, XVII. 3.
[3] Manu, IX. 216.
[4] Brihaspati, XXV. 17.
[5] Brihaspati, XXV. 18—20.

The summary is this: "the son who is in the womb at the time of partition and born subsequently shall be given a full share by the brothers contributing each from his own share and making the share equal. The other son born after partition takes the share of the father; this is the view of Manu and others.

Of Sons.

On this subject, Yama: "Sons are declared to be of twelve kinds by the sages who know the principles, of things. Of these six are bandhus and heirs, and six are not heirs but kinsmen. The first is the son begotten by a man himself; the second is declared to be the son begotten on the wife; the third is the son of the appointed daughter; thus those who know the law have declared; the son by the twice-married woman is the fourth and the son of a damsel is the fifth; the sixth is the son of concealed birth in the house; these six are declared to offer the pinda. The deserted son, the son of the pregnant bride, the adopted son, the son made; fifthly, the son bought and the self-given son. These six of mixed origin are kinsmen but not heirs."[1] Nárada: "Twelve sons have been declared: the legitimate son, the son of the wife, the appointed daughter's son, the damsel's son, the son of the pregnant bride, the son of concealed birth likewise, the son of the twice-married woman, the son rejected, the adopted son, the son made, the son bought and the son self-given." Of these, six are heirs and kinsmen, and six are kinsmen but not heirs. The one preceding is considered the eldest and the succeeding one is considered the younger; these succeed in their order to the wealth of the deceased father. In default of the one preceding, the one succeeding takes the wealth."[2] The meaning is that in default of the one previously mentioned, the one subsequently named is the heir. Manu: "The self-existent Manu has declared twelve sorts of sons of men. Of these, six are bandhus and heirs, and six are kinsmen but not heirs. The legitimate son, the son of the wife, the adopted son, the son made, the son of concealed birth, the rejected son, these six are heirs and bandhus. The damsel's son, the son of the pregnant bride, the son bought, the son of a twice-married woman likewise, the son self-given and the son by a Súdrá woman, are the six kinsmen but not heirs."[3] Baudháyana: "Partition of wealth has been ordained in the case of the legitimate son, the son of the appointed daughter, the son of the wife, the son adopted, the son made, the son of concealed birth and the son deserted; the family name is declared to belong to the damsel's son, the son of the pregnant bride, the son bought, the son of a twice-married woman, the son self-given, and the son of a Súdrá woman."[4] Devala, after mentioning the legitimate son, the son of an appointed daughter, the son of the wife, the damsel's son, the son of concealed birth, the deserted son, the son of the pregnant bride, the son of a twice-

[1] II. Cole. Dig., 332, CXCI.
[2] Nárada, XIII. 45—47.
[3] Manu, IX. 158—160.
[4] Baudháyana, II. 2, 3, 31 and 32.

married woman, the adopted son, the son self-given, the son made, and the son bought, says: "These twelve kinds of sons are declared for the continuation of lineage; *viz.*, sons begotten by oneself, sons begotten by others, and sons got by chance likewise; of these, the first six are heirs and kinsmen and the other six succeed to their fathers only. The rank of the sons is indicated by the order in which they are mentioned. All these sons are declared to be heirs of a man who dies without legitimate issue. But if a legitimate son be afterwards born, there is no deduction for primogeniture for them. Those among them who are of the same caste (with the aurasa) are takers of a third part; if they are of inferior caste, they should live dependent on him, being provided with food and raiment."[1] Vishṇu, after defining the legitimate son, the son of the wife, the son of the appointed daughter, the son of a twice-married woman, the son of a damsel, the son of concealed birth, the son of a pregnant bride, the adopted son, the son bought, the son self-given, the son cast off, and the son found in whatever manner says: "Of these, the one first in order is superior; he alone is the heir; he should protect the rest."[2] The son begotten by oneself is the first in rank; the son of the wife is the second; the son of an appointed daughter is the third; the son of the twice-married woman is the fourth; the son of a damsel is the fifth; the son of concealed origin is the sixth; the son of a pregnant bride is the seventh; the adopted son is the eighth; the son bought is the ninth; the son self-given is the tenth; the son rejected is the eleventh; the son by a Súdrá woman is the twelfth; the son made is the thirteenth. Others think that the son by a Súdrá woman is the thirteenth. On the point of discussion, Vishṇu himself says: "The legitimate son, the son of the wife, the son of the appointed daughter, the son of concealed origin, the son of a damsel, the son of the twice-married woman, the adopted son, the son bought, the son made, the son self-given, the son of the pregnant bride and the son rejected; of these, the one succeeding, in default of all preceding, offers the pinda and takes the wealth." Yájñavalkya: "The aurasa is the son begotten on a lawfully wedded wife; equal to him is the son of the appointed daughter; the kshetraja is the son begotten on the wife by one of the same gotra or by another. The gudhája is the son secretly produced in the house. The kánína is one produced by an unmarried damsel and is considered the son of the maternal grandfather; the paurnabhavá is he who is begotten on a woman, whose first marriage had been consummated or not; he whom his mother or father give in adoption is the adopted son; the son bought is he who is sold by them. A son made is one adopted by a man himself. The son given is one who gives himself. The son of the pregnant bride is the son of a woman married when pregnant; he who is forsaken and received (as a son) is the son rejected. Of these, the one succeeding in default of all the

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[1] II. Colc. Dig., 332, CXC. [2] Vishṇu, XV. 28 and 29.

preceding, offers the pinda and takes the wealth."[1] Lawfully married wife] the woman of the same caste married. The son begotten by a man on a woman of the same class married by him is the aurasa, as he is defined as such. The second is the son of the appointed daughter. The third is the son of the wife; he belongs to the owner of the soil if he is anxious for a son; and he belongs to the owner of the seed if he is desirous to have a son; if both be desirous of issue, he belongs to both. The son of concealed birth is the fourth; he is of the mother's class; and belongs to the mother's husband. The son of a damsel is the fifth; he belongs to the maternal grandfather if he is destitute of issue; and to the mother's husband if he has no issue. The son of a twice-married woman is the sixth; he belongs to the person who marries her for the second time. The son adopted is the seventh; he belongs to him who receives him. The son bought is the eighth; he is the son of the buyer, because he is given by his mother or father after receiving money and is accepted by the purchaser as his own son. The son made is the ninth; he is the son of the man who having no son, likes to be a father and takes him as a son, the latter being willing to become his son and behaving like a servant. The son self-given is the tenth; he is the son of the person to whom he, destitute of father and mother or forsaken by them from anger, etc., gives himself of his own accord. The son of the pregnant bride is the eleventh; as he is accepted while yet in the womb, he becomes the son of the person who afterwards marries her. The son deserted is the twelfth; he is the son of the person by whom he is accepted as a son, when he is deserted by his mother, father or others on account of poverty, etc.

Brihaspati: "One alone, *i.e.*, the aurasa, is pronounced to be the owner of the wealth; the appointed daughter is declared to be equal to him; but the other sons are to be maintained."[2] Manu: "One alone, *i.e.*, the aurasa is the lord of the father's wealth; let him, however, give maintenance to the others out of charity."[3] Charity] compassion. Maintenance] livelihood.

If the appointed daughter be born first and the aurasa son be born afterwards, he is an equal sharer with her. He himself says that: "If, after a daughter had been appointed, an (aurasa) son be born, the partition in that case shall be equal; for there is no primogeniture for women."[4] Kátyáyana: "If an aurasa son is born afterwards, the rest, if of equal caste, take a third share; but if of unequal in caste, are entitled to food and raiment only."[5] This partaking of a third share applies to the kshetraja; for as is stated in the Bráhma Purána: "The aurasa son, though born afterwards, shall enjoy all the wealth; the kshetraja shall enjoy a third portion and the son of the appointed daughter, a fourth."[6] Others say that this text refers to the adopted son possessed of very excellent qualities.

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[1] Yájñavalkya, II. 128—131.
[2] Brihaspati, XXV. 35.
[3] Manu, IX. 163.
[4] Manu, IX. 134.
[5] II. Cole. Dig., 348, CCXVIII.
[6] *Ibid*, 344, CCXVII.

Premising the adopted son, Vasishṭha says: "After a son is taken in adoption, if an aurasa son is born, he becomes the partaker of a fourth part, if the estate had not been spent in the performance of virtuous acts."[1]

Here, the power to take the whole property, even where other sons are alive, belongs only to the aurasa son, as is laid down by Manu and all the others; it is also laid down by the same authors that they take shares in it. This inconsistency should be explained thus: in case the legitimate son is possessed of good qualities, the entire wealth shall be taken by him alone; if the legitimate son is not possessed of good qualities and if the rest are possessed of good qualities, the property should be taken by them in the manner laid down. Thus the inconsistency allotting greater and less shares laid down by the same sages to the adopted son or the kshetraja should be reconciled by taking into consideration his possession of good qualities or being devoid of them. The inconsistency also of the texts of Vishṇu and Yájñavalkya inculcating the order in which they should perform sráddha should be reconciled by taking into consideration the possession of good qualities and the want of them, or recognising their rights alternatively.

Regarding partition between sons of the same mother by different fathers, Vishṇu says: "The allotment of shares to sons (born of the same mother) by different fathers shall be according to their fathers."[2] What is the property of one's father, that son alone takes and no other. All the sonless persons have been declared in the Sráddha Chintamani, and (therefore) it is not treated of here. Those sons who are adopted not in the mode pointed out in the Sastras do not share the wealth, for they are not regarded as real sons.

Succession to the Property of one who dies leaving no Sons.

On that point Vishṇu: "The wealth of one dying without issue goes to the wife; in default of her, it goes to the daughter; in her default it goes to the mother; in her default, it goes to the father; in his absence, it goes to the brother; if there are no brothers, it goes to the brother's son; in default of them, it goes to the bandhus; in their absence, it goes to the sakulyas; in his default, it goes to the fellow-student; in his absence, it goes to the king, excepting the property of the Bráhmin."[3] Here 'bandhus' are the sapiṇḍas. Sakulyas are men of the same gotra. Brihat Manu: "The sapiṇḍa relationship extends to the seventh degree; but the samánodaka relationship extends to the fourteenth degree; some say that it extends as far as the family and name are known."[4] Dying without issue] without son, grandson or great-grandson. The right to perform sráddha being established in the order laid down in the text, "The son, the grandson or the great-grandson", the right to succeed to the wealth which is similar to it is also settled.

[1] Vasishṭha, XV. 9.
[2] Vishṇu, XVII. 23,
[3] Vishṇu, XVII. 4—13.
[4] Not found.

The Right of the Wife.

On this subject Vriddha Manu: "A childless woman, keeping the bed of her lord inviolate, and engaged in (meritorious) vows shall alone give the pinda and take the entire share."[1] Brihaspati also says: "The wife of a man dying without issue takes his wealth, even though there be sakulyas, the father, the mother and uterine brothers. The chaste wife dying before her husband takes away his consecrated fire; or if the husband die (in her lifetime) the chaste wife takes his wealth; this is a primeval law. Having taken his moveable as well as immoveable property, gold, the base metals, grain, liquids and clothes, she shall cause to be performed monthly and six-monthly sráddhas, etc. She shall honor the paternal uncles, the spiritual preceptor, daughter's sons and her husband's sister's sons, maternal uncles, and old persons and guests and females of the family. The king shall mete out to those of her sapiṇḍas or bándhávás who, becoming her enemies, injure her wealth, the punishment awarded to robbers."[2] By the enumeration of sráddhas, it is meant that she shall perform the obsequies, anniversaries, etc., of the deceased. The meaning is that she shall take the entire wealth. This applies to the case of the property of a husband separated (from his co-heirs). Pativrata] virtuous woman and not 'following her husband': for if it meant a woman practising sati, there is no possibility of a woman taking the wealth. Thus the chaste wife is entitled to the property, in default of (heirs) down to the great-grandson of the husband.

Where the husband is undivided, Sankha says: "To the childless wives of brothers and of sons, who conduct themselves aright, the venerable owner should give mere food and garments not tattered."[3] Háríta says: "A young widow is untractable; but property must always be given to her that she may spend her life."[4] Bálarúpa says that this relates to a reunited husband. Where the husband dies undivided, he has no share at all; what can she take? It cannot be said that she is entitled to a share, for there is no text giving her a share, nor could it be said that these texts themselves ordain for her a share; for these are appropriate even with reference to the wealth of the divided husband. Therefore alone it is directed by Vasishtha: "Partition of heritage among brothers to wait until the childless wives beget sons."[5] It has been thus commented on by Ratnákara and others: a share must be reserved, in a partition among her brothers-in-law, to the son who may be born of the widowed wife who is pregnant by her husband; the share is to be taken by the brothers-in-law in case no son is born to her.

It is said in the Mahábhárata: "For women, the heritage of their husbands is declared applicable to use. But let women never

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[1] II. Cole. Dig., 535, CCCCVIII.
[2] Brihaspati, XXV. 48—52.
[3] II. Cole. Dig., 538, CCCCXII.
[4] *Ibid*, 536, CCCCIX.
[5] Vasishṭha, XVII. 41.

make waste of their husband's wealth."[1] Waste] giving or selling, etc., at their pleasure.

In default of the wife, it goes to the daughters, by the text of Vishṇu, previously cited.

Nárada also: "In default of the son, the daughter (succeeds); for she perpetuates the race as the son; since both the son and the daughter are the means of continuing the father's line."[2] Manu also: "The son of a man is even as himself; and the daughter is equal to the son; how then can another take the wealth, when she, his own atman, lives?"[3] Brihaspati also: "The daughter, like the son, springs from the various limbs of men; how can another man take her father's wealth (when she is alive)?"[4] But what kind of such daughters takes the wealth of her father is laid down by the same author: "Being of equal class and married by a man of like class, virtuous and devoted to obedience, the daughter, whether appointed or not appointed, shall take the property of her father who leaves no son."[5] Bálarúpa says that the order here is that laid down in the text of Parásara: "The wealth of a sonless man, his maiden daughter takes: in default of her, the married daughter."[6] All these do not relate to the appointed daughter; for the term 'or not appointed' has been used. Nor can it be said that the word 'Akrita' means "appointed in thought as daughter, for Manu has ordered that such a daughter shares the wealth equally even with a son".

In default of the daughter, it goes to the mother, according to the text of Vishṇu. Brihaspati also: "The wealth of a son who dies leaving neither widow nor sons, the mother takes; or the brothers by permission".[7] By permission] by the mother's permission. Here the term 'mother' is indicative of even the father. Therefore, Párijáta says that 'by permission'] means 'by the permission of the father and mother'. Brihaspati: "Just as she has ownership in her father's wealth although kinsmen exist, so also her son has ownership in the maternal grandfather's estate."[8] Manu: "The daughter's son shall take the entire wealth of the sonless father; he should offer two pindas, to his father and his maternal grandfather."[9] These two texts apply when there are neither father nor mother in accordance with the order prescribed in 'the wife; the daughter, etc.'. Manu also: "The mother shall take the wealth of a son dying childless; and when the mother is also dead, the paternal grandmother takes the wealth."[10] The meaning is that the mother takes the wealth of a son who leaves no heirs down to the daughter; the maternal grandmother takes in default of persons to the extent of sakulyas; for in default of the mother, the right of the father and the rest is established.

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[1] II. Cole. Dig., 528, CCCCII.
[2] Nárada, XIII. 50.
[3] Manu, IX. 130.
[4] Brihaspati, XXV. 56.
[5] *Ibid*, XXV. 57.
[6] II. Cole. Dig., 542, CCCCXVIII.
[7] Brihaspati, XXV. 63.
[8] *Ibid*, XXV. 58.
[9] Manu, IX. 127.
[10] *Ibid*, IX. 132.

In default of the mother, it goes to the father, by the text of Vishṇu. On the same subject, Manu also: "The wealth of a sonless man, the father takes or the brothers."[1]

The right of the brother is known from the text of Vishṇu. On this subject Gautama: "The wealth of deceased (brothers) goes to the eldest brother."[2] Manu: "To the nearest sapiṇḍa, the inheritance next belongs."[3] Ápastamba: "The near sapiṇḍa is entitled to the wealth of an issueless person; in default of him, the distant one; in his default, the preceptor; in his default, the disciple."[4] Yájñavalkya: "The wife, the daughters likewise, both parents, brothers likewise, their sons, gotrajás, bandhus, the disciple, and the fellow-student; of these, in default of the preceding, the succeeding takes the wealth of a man dying without male issue; this rule applies to all classes."[5] Both parents] here if a doubt arise as to the order, the mother takes first and in her default, the father; for it has the same origin with Vishṇu's text. Their sons] brothers' sons. Without male issue] having no sons, grandson or great-grandson. Kátyáyana: "Where a man dies separated from his co-heirs, his father takes his wealth in default of sons; or the brothers, or the mother or the maternal grandmother in order."

Paithinisí: "The property of an issueless man deceased, goes to the brothers; in their default, his parents shall take it."[6] Devala: "Let uterine brothers divide the wealth of a sonless man; or the daughters equal; or the surviving father, or (half) brothers of the same class, or the mother or the wife in their order; in the absence of all these, the nearest sakulyas shall take."[7] Equal] uterine brothers. Brothers of the same class] brothers by a different mother. To reconcile the texts of Vishṇu and Yájñavalkya with this of Devala, the term 'in order' in the text of Devala is commented on by Haláyudha as meaning 'in the order laid down by Yájñavalkya'. The opinion of the author of the Kalpataru is the same, for he quotes the texts of Vishṇu and Yájñavalkya after that of Devala. But that is not satisfactory; for the adopting of the order given by another abandoning the order given by oneself on the ground that the text supporting the latter could be construed in support of the former is objectionable as preferring the remote to the immediate; also because even then, the conflict with the text of Paithinisí cannot be removed. Therefore, Ratnákara states that the order laid down by Vishṇu and Yájñavalkya applies to property acquired by ancestors, and that the order laid down by Paithinisí to property other than that. Baudháyana: "In default of sapiṇḍas, sakulyas take; in the absence of these, the preceptor, or the disciple or the ritwik; on failure of these, the king."[8]

On default of sagotras, bandhus succeed, according to the text

[1] Manu, IX. 185.
[2] Gautama, XXVIII. 27.
[3] Manu, IX. 187.
[4] Ápastamba, II. 6, 14, 2 and 3.
[5] Yájñavalkya, II. 135 and 136.
[6] II. Cole. Dig., 536, CCCCX.
[7] *Ibid*, 532. CCCCIV.
[8] Bandháyana, I, 5, 11, 12—14.

of Yájñavalkya. Bandhus are of three kinds, *viz.*, one's own bandhus, father's bandhus and mother's bandhus. "One's own father's sister's son, one's mother's sister's sons, and one's maternal uncle's sons; these should be known as atma-bándhávás. The father's father's sister's sons, father's mother's sister's sons and father's mothers's brother's sons; these should be known as pitru-bándhávás. The sons of one's mother's father's sister, the sons of one's mother's mother's sister and the sons of one's mother's mother's brothers; these should be known as one's matru-bandhus."[1] These are entitled to succeed in their order. Bálarúpa is to the same effect. The king shall take (all heirless property) excepting the wealth of a Bráhmin. Manu states that: "The wealth of a Bráhmin shall never be taken by the king; this is settled; but he shall take the wealth of the other classes in default of all heirs."[2] Devala: "The king shall take the wealth of a heirless subject in all cases, except the wealth of a Bráhmin. But let the wealth of an heirless Bráhmin be given to Srotriyas."[3] Heirless] having no one to inherit. Brihaspati: "The wealth of those Kshatriyás, Vaisyás and Súdrás who leave no son, wife or brother, the king shall take; for he is the lord of all."[4] Baudháyana: "Poison kills only one (*i.e.*, he who takes it); but the wealth of a Bráhmin kills the son and the grandson. Therefore the king shall never take the wealth of a Bráhmin."[5] Sankha and Likhita: "The wealth of a Srotriya goes to Bráhmins and not to the king."[6] Parishad] Bráhmins.

The summary of this is: The son (inherits); in his default, the grandson; in his default, the great-grandson; in his default, the chaste wife; in her default, the daughter; in her default, the mother; in her default, the father; in his default, the daughter's son; in his default, the brother; in his default, his son; in his default, the near sapiṇḍa; in his default the remote sapiṇḍas in their order; in their default, the near sakulyas; in their default, the distant sakulyas; in their default, the maternal uncle, etc. In default of all, the property goes to the king, except the wealth of a Bráhmin. Bráhmins are entitled to take the wealth of a Bráhmin.

Yájñavalkya: "The heirs of a hermit, an ascetic and a perpetual student are, in their order, the preceptor, the virtuous disciple and fellow-student and brother in holiness."[7] In their order] in the inverse order. The preceptor takes the wealth of the perpetual student who is living in the preceptor's house; the virtuous disciple, of an ascetic. The hermit alone who is recognised as a brother takes the wealth of a hermit. There is no possibility of a hermit and an ascetic getting the paternal grandfather's wealth, etc., from the text: "Persons who have entered another order are not entitled to share."[8] But the property of a hermit is what he has gathered for a year; the property of an ascetic is cloth for

[1] Attributed to Baudháyana but not found in his Institutes.
[2] Manu, IX. 189.
[3] Baudháyana, I. 5, 11, 16.
[4] II. Cole. Dig., 572, CCCCXLV.
[5] II. Cole. Dig., 573, CCCCXLVII.
[6] Brihaspati, XXV. 67.
[7] Yájñavalkya, II. 137.
[8] Vasishṭha, XVII. 52.

covering the privy parts, etc. Sankha: "Stridhana must not be taken by the king, nor the wealth of infants, nor the property of woman received in the six modes, nor the paternal wealth of infants."[1] Received in the six modes] defined as 'before the nuptial fire, etc.'. Manu: "The king should protect the property of infants got by inheritance till he returns from the house of his preceptor or till he has passed his minority."[2]

Partition of Wealth of Reunited Parceners.

On this subject, Brihaspati: "Where one, after divsion, lives again with his father, brother or paternal uncle out of affection, then he is termed reunited."[3] One's property belongs to all; our property belongs to all, this is re-union; that is to be inferred by their joint transactions. It produces right of ownership in all the property that had been or that will be acquired by even one of them. Prakása states that the reunion is the mixing of wealth after division only between the father, brother and paternal uncle, by the force of the restrictive enumeration. That is not sound; for owing to the force of the word 'again' implying repetition, the word 'reunion' can with ease be taken to denote only the subsequent putting together of wealth once divided.

Therefore reunion may be between paternal uncle's sons even, who were once parties to the division. Therefore the enumeration of the father, etc., is only explanatory. Therefore, alone the Ratnákara and the others say that the term '*va*' (or) indicates inconclusiveness. The moderns, however, say that reunion consists in the union of men having separate wealth, this construction being easier, and not in the union of men whose wealth was once divided, that construction being more forced. And men may have separate wealth either naturally or by means of partition. But this reunion depends only upon the consent of those who reunite.

But reunion may take place even between persons who are naturally separate in wealth and not (between co-heirs) after partition only. Otherwise, one who is separated from the father cannot be reunited with a brother born after partition. It cannot be said that they cannot be reunited; for persons are seen to be so reunited. Where a parcener is a minor, reunion should, like partition, take place with the consent of the mother; owing to the similarity of the transactions.

Accordingly, "Where brothers, once divided, live again together out of affection and make a second partition, there is no right of primogeniture. If any one of them die or enter the order of an ascetic, his share shall not be lost; it is declared to belong to the uterine brother. She who is his sister deserves to get a share of it.

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[1] II. Cole. Dig., 573, CCCCXLVII. [2] Manu, VIII. 27.
[3] Brihaspati, XXV. 72.

This law applies in the case of a man dying without issue, wife nor father. Where one of the reunited parceners acquires wealth by learning, valour, etc., two shares should be given him and the rest shall be equal sharers."[1] (Living) together] being reunited. Primogeniture] no larger share (should be given to a parcener) even if there exist any cause for giving him a larger share, *i.e.*, being the eldest. In the case of property acquired by learning, the same author lays down a distinction by the text "if any one, etc.". If any one of the reunited parceners becomes incompetent to share, either through death or entering into another order, his share shall not be lost. In answer to the question who takes the share, the author states that it belongs to the uterine brother. The meaning is that it belongs to the reunited uterine brother; for it can be easily settled to have the same origin with the text of Manu: "Uterine brothers as well as reunited brothers and uterine sisters having assembled together shall divide it in equal shares."[2] So the purport is that non-reunited brothers, though uterine, do not get it. Some, however, say: "If, after reunion of parceners, a part of whose wealth had been divided, one of the reunited dies, it should be thought that even in respect of the undivided property, partition by ascertainment of share has been made and his share fixed on that principle of *sthálipuláka*. The share shall be taken by the uterine brother reunited; because, it is there alone that the exceptional rule in 'of the sonless man, etc.', applies."

This is unsound. The ascertainment of shares is not the desired result of partition; for that is accomplished in respect of those living at the date of partition. But actual division of properties (is the desired result); and that cannot be achieved by the mere ascertainment of shares if the properties belonging to every share are not denoted by casting of lots. Therefore, when one coparcener dies, the right of the survivors to the entire property is either extinguished or is reduced or creates a right in them to his property. This is the result of partition. It consists in the recognition of the fact "what has fallen to your share does not belong to me" and "what has fallen to my share is not yours". That is the partition made by the casting of lots. If it be not duly made, then the whole property is divided; if it is duly made, then the principle of ascertaining whether all the rice is boiled by examining only a portion of it, applies, for the properties are diverse.

Yájñavalkya says: "One reunited to the reunited; the uterine brother to the uterine brother; shall give and take the share of one who is subsequently born or dead."[3] Haláyudha says: that 'játa' means 'born and alive'. Others interpret the text thus: "If when the father and son reunite, and a son is born to the father subsequent to partition and the father dies, the son reunited shall give to the son born the father's share." The meaning of the text is that the

[1] Brihaspati, XXV. 73—77. [2] Manu, IX. 212.
[3] Yájñavalkya, II. 138.

share of the reunited deceased goes to the surviving reunited; but that where there has been a reunion among uterine brothers and step-brothers, to the uterine brother alone. Thus even in case of reunion of the son and the father, then the son reunited with the father alone takes the father's share even where there are other divided sons. The son not reunited does not take; because the rule "of the reunited the reunited" has no limitation and because reunion of father and son is also spoken of by the text: "the son who being divided with his father, etc.". This is indeed sound, for the right of other sons to the father's wealth is barred by the fact of partition; but the right of the reunited son has been created by the reunion. Nor could it be urged that this is wrong because the exceptional rule says; 'this law regards the sonless'; for that text does not apply to the case of sons born after reunion. The gist of all that has been said is that the sons born after partition take the share of the reunited father and in default of them, the reunited son or brother but not the son not reunited. Manu says: "The son born after partition shall alone get the father's share or shall share the property with those living in reunion with him."[1] From the latter half of Manu's text, it is established that he alone takes the father's wealth and that in default of him alone the right of those not reunited is tenable. Hence alone it is also said: "The son born before partition has no right to the paternal wealth, nor he born after it to the wealth of his brothers."[2] If it be urged that where one after division with sons lives in reunion with his brother and dies leaving no son born after division, his share would be taken by the brother reunited and not by the sons previously divided, we truly reply so.

Where there is a step-brother reunited and a uterine brother not reunited, Yájñavalkya says: "A step-brother reunited may take the share of his step-brother but not one not reunited; a uterine brother takes though not reunited, but not one born of a different womb."[3] A step-brother being reunited takes the share of his reunited brother, but does not, if not reunited. But a uterine brother takes though not reunited. The word 'wealth' should be supplied. The reading 'a step-brother does not take' is easily understood. 'Nányamátrija' (but not one of a different womb) is only a repetition. Thus the fact of reunion in the case of the step-brother and the fact of being born of the same womb in the case of a uterine brother are in effect said to be the causes of their taking the wealth. The meaning (of the first verse) is not that the step-brother does not take the wealth of the step-brother though reunited; for that would counteract (the effect of) the reunion and would make this text of the Smriti based upon a supposed passage of the Vedas even when it is possible to base it on mere reasoning.

Nárada says: "The share of the reunited goes to the reunited alone. In their default it goes to the heirs, and in the case of the

[1] Manu, IX. 216. [2] Brihaspati, XXV. 18.
[3] Yájñavalkya, II. 139.

sonless it goes to others."[1] The shameva] to the reunited alone; otherwise] in default of the reunited. The share goes to the heirs, *i.e.*, the sons. Where sonless reunited parceners die, the share goes to the other reunited parceners. This is the meaning. The meaning of the first half is not that the share of the several parceners at the time of the reunion should be recognised and allotted to them at the second partition; for equality having been created by reunion this restrictive rule would have to be supported on the hypothesis of some invisible benefit. Sankha says: "If one of the brothers die sonless or turns sanyásin, the rest shall divide his wealth save what belongs to his wife and shall maintain his women for life if they keep the bed of their lord inviolate. In the case of others they shall take it forcibly. If there be his (unmarried) daughter his wealth shall be allotted to her maintenance. She shall enjoy her share until marriage, and afterwards her husband shall support her."[2] The rest of the reunited brothers of others and those who do not keep their beds inviolate, *i.e.*, of unchaste women. It] the stridhana wealth. By this it follows that not only is maintenance to be refused to them, but also that their stridhana wealth should be forcibly taken. The daughter here contemplated is a maiden. Her maintenance should be given out of her father's wealth until marriage. This is the meaning. Kátyáyana says: "The reunited of the reunited and the separately living of those separately living should in default of sons be regarded as each other's heirs."[3] The expression 'in default of sons' explains when the alleged right of one to take the wealth of another on his death accrues. The meaning is that they succeed to each other's wealth in default of issue. Therefore, the brief gist of this discussion is this: Where there is a reunited parcener and his son, grandson or great-grandson born subsequent to the previous division, he alone takes the deceased's share. But if there be none such the widow (wife) possessed of chastity and all other virtues and abstaining from the eightfold sexual gratification (takes). Any other wife, not unchaste, should be maintained, but does not obtain the share. His unmarried daughter should be maintained out of her father's wealth until she is married. Even the father should be only maintained like the chaste wife. But where none of these exist, the reunited parcener obtains all the wealth of his deceased reunited parcener; where step-brothers and uterine brothers reunite, the uterine reunited brother alone takes. Where step-brothers alone reunite and there are uterine brothers, the uterine brothers and step-brothers take equally. But where there is a brother of only one class, he alone takes. If the wealth acquired by learning by one of the reunited after reunion be divided, the acquirer takes two shares and the others reunited each a share.

Prakásakára says: "Immoveable property and bipeds though self-acquired, cannot be given away or sold without convening all

[1] Not found.

[2] Found in Nárada (XIII, 25—27).

[3] II. Cole. Dig., 553, CCCCXXVII.

the sons. Those who are born, those who are not born and those who are in the womb require property for their maintenance, and the deprivation of maintenance is condemned."[1] An exception to this is thus stated: "Even one alone may give, pledge or sell immoveable property during distress, for the benefit of the family and especially for pious acts."[2] The meaning is that even divided immoveable property can be given away or sold by one of the parceners in the case of common danger, or for the marriage of a maiden. As for the text: "All co-heirs are alike in respect of immoveable property, whether they are divided or undivided. Any one singly is always powerless to give away, pledge or sell."[3] This is intended to lay down that one singly is powerless in respect of property which has not been actually divided into shares, but is enjoyed in common and that where so divided, each can do independently whatever he likes. Some others think that this passage is intended to lay down that the consent of even the divided parceners should be obtained to remove all suspicion of their being undivided. As for the text: "Land passes with six formalities; the consent of the inhabitants of the village where the land is, that of kinsmen, that of neighbours, that of dáyádis and the gift of gold and water."[4] This also means that the consent of the inhabitants of the village, of the kinsmen and of the dáyádis, is for making the gift widely known and that the consent of the neighbours is for removing all disputes, respecting boundaries. As for the gift of gold and water it is intended to lay down that where a sale is to be made it should be made in the form of a gift by giving gold and water, because of the prohibition of sale by the text: "There is no sale of immoveable property; it can be pledged with consent,"[5] and of gift being eulogised by the text: "He who accepts land given and he who gives land, both these do virtuous deeds and certainly go to heaven, etc."[6]

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[1] I. Cole. Dig,. 411, XI and XII.
[2] I. *Ibid*, 458, LVI.
[3] Brihaspati, XXV. 93.
[4] I. Cole. Dig., 441, XXXIII.
[5] Not found.
[6] I. Cole. Dig., 444, LXI.

VÍRAMITRODAYA.

CHAPTER I.

Partition of Heritage.

1. Partition of Heritage, wherein the learned dispute in various ways about the interpretation of the texts of Manu and other sages, is to be explained by this treatise.

2. Nárada thus declares its definition:—"Where the division by the sons of the paternal property is treated of, that topic of litigation is by the wise called partition of heritage."[1]

"Paternal" signifies what belongs to the parents; for the affix *ya* (in the term *pitriya* rendered into "paternal") is added to the term *pitri*, which is the result of the uni-residual conjunctive compound (of two words *mátri* and *pitri*, equivalent to mother and father, respectively). Because the division of the mother's estate also has been in the sequel ordained (by Nárada).

Both the terms "paternal" and "sons" indicate any relation; for in the text,—"The wife and the daughters also, &c."[2]—partition by other relations also, of the property of the husband and the like, is ordained (by Yájñavalkya).

Accordingly, the terms "father" and the like, are not used by Manu in premising the subject in the following text:—

"Thus has been declared to you the law of man and wife based upon affection; listen now to the law of heritage, and to the mode of having offspring on failure of the true son."[3]

Here again, by the term "law of heritage", is intended the partition of heritage; for that alone is in the sequel explained (by Manu) after the laying down of its definition; and because, in the introduction also, that only has been set forth as the topic of litigation; thus,—"The law of man and wife and *partition*." Accordingly also, Manu ordains in the sequel, the partition of the estate by any relative.

3. The term "heritage" again, is said to be applied to the property to which (one's) right accrues, solely by reason of (his) relation to the owner. Thus the author of the Nighantu says:—"The property of the father which is to be divided, the sages call heritage." Here too the term "father" stands for any relation,

[1] Nárada, XIII. 1. [2] Yájñavalkya, II. 135. [3] Manu, IX. 103.

for the term "heritage" is used to denote also the estate of any other relative. "Which is to be divided" means which is capable of partition (and not which is to be necessarily divided); for otherwise the term "heritage" would not include the estate which devolves on an only son or the like, by reason of the absence of (actual) partition.

As for what is said by Jímútaváhana, namely:—"The term *dáya* (heritage) by derivation, signifies what is given: hence the use of the term *dáya* and the verb *dá* is in a secondary sense; inasmuch as there is a similarity (of the secondary with the primary meaning of the term) in the consequence, namely, the accrual of another's right after the extinction of the right of a person who is dead or gone to retirement or the like. But there is no abdication (as in the case of gift) on the part of the deceased or the like. The term "heritage" (*dáya*) has a technical meaning, signifying wealth in which one's right dependent on relation to the former owner arises on the extinction of his ownership."

That is not sound: for if the meaning be admitted to be technical, then the supposition—that the use of the term *dáya* and the verb *dá* is in a secondary sense—is useless; because the meaning of a word is said to be technical, when there is utter absence of the meaning of its root. Nor can it be said that the meaning here is derivative as well as technical: because the inapplicability of the derivative meaning has been set out by (Jímútaváhana) himself. To assert that the meaning of a term is derivative as well as technical, after assuming a figurative meaning of its root is useless, involves the fallacy of mutual dependence, is against the order in which meanings are naturally suggested by words, and is a *reductio ad absurdum*. By the insertion of the phrase "on the extinction of his ownership" in the definition of heritage, it becomes too narrow, because it will be established, that right arises by birth also.

4. The term "partition", however, signifies the adjustment into specific portions, of the divers right which accrued to the entire estate. Hence the term "partition" is not used in cases of ownership of an only son, &c., in the wealth of the father, and the like: "the heritage has been obtained by such a person" is the expression used (in such cases). Moreover, where a single chattel, such as a female slave, or a cow, or the like, is common to many coparceners, then also the meaning of the term "partition", namely, the adjustment of right into specific portions, holds good; because the right of each (co-sharer) is made known by means of the service (of the slave) or the milking (of the cow) or the like, done at regulated intervals. Accordingly, it will be shewn that (in such cases) partition is to be made in the mode declared in the following texts of Brihaspati:—

"A single female slave should be employed on labour in the house (of the several co-sharers) successively according to the

shares .... and water of wells or ponds is to be drawn for use according to need .... such property (as is regularly not divisible) should be distributed by equitable adjustment, else it would become useless."[1]

5. The heritage, as described above, is of two sorts, namely, unobstructed and obstructed. As the right of the sons, &c., to the property of the father and the like, accrues from the very birth, through the relation of sonship, &c., although the (previous) owner, such as a father, is alive,—that is their unobstructed heritage; because the existence of the (previous) owner does not constitute an obstruction. But the property of a deceased person who is destitute of male issue, and who was separated but not reunited, when it devolves on the father, brother, or the like, is called the heritage with obstruction; for their right thereto accrues only on the cessation of the owner's existence which formed the obstruction.

6. But is not heritage in every case obstructed? For it cannot be asserted that the right even of sons, &c., arises by birth alone while the owner is alive.

Because if by birth alone the right of the sons and the like accrued to the property of the father, &c., then the property would be common (as well to the father, &c., as) to the sons and others as soon as they would be born; consequently without their permission the father and the like could have no right to the establishment of the sacred fires, which can be accomplished only by means of wealth. But this would be opposed to the following Sruti:—"One who is black-haired and to whom a son has been born shall establish the sacred fires."

7. Moreover, the texts declaring the impartibility of what has been, previously to partition, received by favor of the father and the like would become unmeaning. For, if the gift has been made by the father with the consent of the sons, then the gift is made by all; therefore the prohibition (of partition) becomes useless, in consequence of the very absence of the possibility of partition: again, in the absence of the consent (of the sons), no gift of joint property is possible. Hence the texts concerning the affectionate gift and the like, by the father and others, would become unreasonable.

8. Similarly, because without the consent of sons, also the affectionate gift by the husband and others to the wife and the like, would be impossible, and in case of their consent, the gift is made by sons also; hence in the following text—"What has been given by the affectionate husband to his wife, she may, even when he is dead, consume it or give it away, excepting immoveable property,"[2]—the declaration,—in the passage "consume it or give it away"—of the impartibility of what has been through affection

[1] Brihaspati, XXV. 82 and 80.

[2] Nárada, I. 28.

given by the husband, would become meaningless. Nor can it be contended that the text does not intend to establish the affectionate gift in the undivided state, and its impartibility; but, by construing together "what has been given" with "excepting immoveable property", it establishes that even after partition, immoveable property shall not be given, through affection, by the husband to the wife, and even if given by him through ignorance, shall be resumed and divided by the sons and the like,—but that moveable property when given shall not be resumed is only a superfluous injunction; and it signifies, as its purport, only the prohibition of gift through affection of immoveable property to the wife. Because such a construction is unreasonable, involving as it does the connection of terms which are apart from each other. If the intention were merely the prohibition of affectionate gift of immoveables, then the other portion would become a superfluous precept which is another term for what is useless.

9. Now the text, namely,—"The father is master of all the gems, pearls and corals; but neither the father nor the grandfather is so of the whole immoveable property,"[1]—also the following text, *viz.*,—"By favor of the father, apparels and ornaments are used; but immoveable property may not be enjoyed even by the favor of the father,"[2]—must be admitted to imply the prohibition of affectionate gift of immoveable property, before partition; for the mention of its prohibition is preceded by the authorization of gifts through affection, of gems, pearls, &c.: otherwise these (texts) would be useless as superfluous precepts. Accordingly, as the right of the sons and the like, arises by birth, therefore in the gift, even without their consent, of gems, pearls, and the like, the father is independent; but in the case of immoveable property, the distinction is that a gift can be made only with their consent. This being the plain meaning of the above two texts, right by birth follows.

This is wrong:—for the texts refer to immoveable property inherited from the grandfather. The meaning of the texts is,—that although when the grandfather is deceased, his right being extinguished, the right to his estate is common to the father and the son, still the consent of the son is requisite in the case of immoveable property, but not in the case of gems, pearls, and the like.

10. As for the text of Gautama, namely,—"By birth alone one acquires ownership of property: this the sages declare,"[3]—which is, by the author of the Mitákshará cited as an authority for holding birth to be a means of proprietary right.

That has been already explained (in a different way) by the author of the Dáyatattva, thus,—"Inasmuch as it is through the relation of mere birth—which is the cause of sonship and which is

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[1] I. Cole. Dig., 411, XIII. [2] II. Cole. Dig, 259, XCV.

[3] Not found.

stronger than any other relation,—that the son's right to the property of the father accrues at the time of the cessation of the father's right, the son and not any other relative, should take that property; this the sages declare."—Its meaning, however, is not that even while the father's right continues, the son's right accrues thereto; for that would be in conflict with the texts of Nárada and Devala. Since in the text—"When the father is dead, the sons shall divide the wealth of the father,"[1]—Nárada speaks of the father's wealth, otherwise he would have simply said "shall divide the wealth"; also in the text—"When the father is dead, let the sons divide the father's wealth; for they have not ownership while the father is alive, and free from defect,"[2]—Devala also, after having said "the father's wealth", has, by the latter half, *viz.*, "for they have not ownership, &c.", clearly set forth the absence of their right as the reason thereof. "Free from defect" signifies, having no defects, such as, degradation, &c., which extinguish right. Manu also clearly declares the absence of the ownership of the sons in the property while the father and the mother are alive, thus:—"After (the demise of) the father and the mother, the sons having assembled together, shall divide the paternal heritage; for these are not masters while those are alive."[3]

11. As for what is asserted, namely, Sankha and Likhita say, in the text,—"The sons shall not divide the heritage while the father is alive; although ownership is subsequently acquired by them, the sons are certainly incompetent by reason of the absence of independence in respect of wealth and religious duties,"[4]—which has been interpreted by the author of the Smritichandriká in the following way:—"Although ownership" in the property of the father "is by them", *i.e.*, by the sons "acquired", *i.e.*, gained "subsequently", *i.e.*, immediately after their birth and not afterwards, still "while the father is alive" they shall not divide his wealth except at his desire, the sons being incompetent to make partition "by reason of the absence of independence", *i.e.*, by reason of their being dependent on the father "in respect of property and religious duties";—hence from this text it follows that the right of sons, &c., to the property of the father and others accrues by birth.

This too is not tenable; for consistently with the various texts of Manu and other sages, which ordain the absence of right (during the lifetime of the father), this text ought to be explained otherwise, and it has been so explained in the Kalpataru, thus:—"Although ownership is subsequently acquired in the wealth gained by the sons through learning, &c., without making use of the paternal property; still by reason of the absence, during the lifetime of the father, of their independence in respect of property and religious duties, there is not (absolute) ownership even in the

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[1] Náradas, XIII. 2.
[2] II. Cole. Dig., 196, V.
[3] Manu, IX. 104.
[4] II. Cole. Dig., 199, VII.

property so acquired,—then what ownership can there be in the father's estate?"

12. Moreover, the notion of the proprietary right (and of the means of its acquisition) is derived solely from the Sastras: but in these birth is not, as inheritance or purchase or the like is, set forth as a means of such right; therefore right by birth is without authority. Hence is refuted the argument that as the text,—"A wife, a son, and a slave, these three are incapable of having property: whatever they acquire belongs to him whose they are,"[1]—is intended to establish mere dependence, so are the texts declaring the absence of ownership (during the lifetime of the father). Because in the cases of a wife, a son and the like, their ownership (in the wealth acquired by them) by means of spinning, &c., and of tutorship, being established by texts like,—"What has been obtained before the fire, &c,"[2]—the interpretation that the above text refers only to the absence of independence is consistent with reason; for otherwise the competence—of sons and others, mentioned in the Puránas and the other Sastras, to the performance of religious duties, which can be accomplished by means of property, would also be contradicted. But here, on the contrary, there being no authority for holding that birth is a cause of proprietary right, it would be merely useless to put on various texts other interpretations (than what they plainly signify).

13. Besides, if the notion of the proprietary right were derived from profane authority, then also the notion of the means of its acquisition would be deducible from profane authority; consequently the text of Gautama, namely,—"An owner is by inheritance, purchase, partition, seizure or finding: acceptance is an additional mode for a Bráhmin; conquest for a Kshatriyá; gain for a Vaisyá and a Súdrá,"[3]—would become unnecessary, for it would embody a superfluous injunction. Indeed useless sacred texts, embodying superfluous precepts, such as,—food is prepared from rice by cooking,—are not declared (by sages).

The meaning of the above text is as follows:—"Inheritance" is heritage; "purchase" is well-known; "partition" is the division of heritage, whereby the right to specific portions is indicated; "seizure" is appropriating grass, water, wood and the like appertaining to common tracts such as forests,—which have not been appropriated by any other; "finding" is obtaining hidden treasure whereof the owner is unknown; a person is owner where these causes of right exist and becomes one, whenever these happen; "for a Bráhmin, acceptance", *i.e.*, acquisition in the shape of receiving presents and the like, "is an additional", *i.e.*, peculiar "mode",—for inheritance and the like are common to all (the classes): the term "additional mode" is to be read along with all (the clauses that follow); "for a Kshatriyá, conquest", *i.e.*, what is

[1] Manu, VIII. 416. [2] Manu, IX. 194.
[3] Gautama, X. 39—42.

gained through victory in battle as well as through fines and the like, is a peculiar mode; "gain (*nirvesa*) for a Vaisyá" is what is acquired as profit from agriculture, tending of cattle, and the like, and "for a Súdrá", what is received as wages for serving the twice-born classes: the root *visa* with the prefix *nir* signifies gain, for in the vocabulary called Trikándi, it is laid down that *nirvesa* signifies gain or enjoyment. The terms "Vaisyá" and "Súdrá" being illustrative, the occupations,—such as driving horses, &c., in the case of the Sútás,—of the mixed classes, namely, those that are sprung from a father of a superior class and a mother of an inferior class,—which are laid down in the Ausanasa and the like, are included under the term "gain", for all these are in the nature of "gain".

14. Moreover, in the text,—"A Bráhmin, who seeks even by officiating at sacrifices or by becoming a preceptor to obtain any property from the hands of one who takes what is not given to him is the same as a thief."[1]—the provision of punishment for one who acquires wealth even by means of his own (lawful) profession, such as officiating at sacrifices, "from one who takes what is not given to him", *i.e.*, a thief, would be unreasonable, if the notion of proprietary right were derived from profane authority; since the acquisition through one's own (lawful) profession constitutes no offence.

In my opinion, however, right being derived from divine authority, no right can by virtue of this very text, accrue in the wealth given by a thief for officiating at the sacrifices performed by him, consequently the provision of punishment is very reasonable.

15. Again, if the notion of right were derived from profane authority, then such language as 'my property has been stolen by this person',—could not be used; for the thief himself would have right therein.

In my opinion such expression is correct, because theft, by reason of the prohibition of it, cannot generate right.

16. If, like gold, &c., the right too therein were perceivable by the senses, then it being ascertained, the doubt—whether a certain property is this person's or another's,—could not arise, just as no doubt arises as to what is gold. This is also what the author of the Sangraha has said:—"Whatever is in the hands of a person, he is not necessarily the owner of it. Is not the property of one found in the hands of another (transferred) by theft and the like? Therefore it is from the Sastras alone that the notion of proprietary right springs, and not even from perception. For otherwise it cannot reasonably be said that the property of one has been stolen by another. The means of acquisition are found in the Sastras and are likewise separately described."

[1] Manu, VII. 340.

"In the Sastras" such as "An owner is by inheritance, &c."; "the means of acquisition of wealth",—both which are common (to all classes) as well as what are peculiar (to any one class,) "are separately described", and known therefrom. Otherwise if it were deducible from profane authority, the Sastras regarding it would be useless; the rest is clear. "As I have separately described", is the reading (of the above text) in the Smritichandriká; the prior reading is written in the Madanaratna.

17. Nor can it be contended that,—it being well-known to all people that what is capable of being used according to one's pleasure is his property,—the distinctive feature of property is the capability of being dealt with according to pleasure: hence there is not the defect of including (in the definition of property) what is acquired by theft or the like, for in such property there is not the capability of being used by the thief or the like according to pleasure; inasmuch as their fear is observed at the time of dealing with such property: accordingly, there being no similarity between the proprietary right and gold, &c., as such, the doubt also (as to the right of any person to a particular property) is consistent.

Because it is impossible; for special rules are laid down by the Sastras, directing the use of property for the purposes of the support of the family and the like; and it is nowhere found that property consists in what can be dealt with according to pleasure. This too has been said by the author of the Sangraha after setting forth the opposite view, thus,—"Nor is that called property, which can be dealt with according to pleasure; the application of all this is inculcated by the Sastras alone." Here in the first half the adverse opinion is set forth; and in the latter half, the same is refuted.

18. Nor can it be said that inasmuch as *utpatti* also, which is another name for birth, is like inheritance, &c., set forth as a means of proprietary right, in the text of Gautama, namely, "By birth alone, &c."; therefore although property and the means of its acquisition be deducible from the Sastras alone, still the right by birth of the sons and the like, to the property of the father and the like, is unaffected.

Because it has been already stated that the above (meaning) being open to many exceptions, a different interpretation is to be put upon the text. With this very intention, Dháresvara also has come to the conclusion, that the right of property is exclusively known from the Sastras alone.

19. Again, if right by birth of the sons and the like accrues even when the father and the like are alive, then partition would, at the desire of the sons and the like, take place even against the will of the father and the like. It cannot be contended that it would not take place by reason of the texts declaring absence of independence (of the sons during the father's lifetime). For in that

case (notwithstanding the texts declaring dependence), there would be a mere breach of the rules of morality and religion, but an action at law (for partition) would certainly lie. Just as on the occasion of explaining the text, namely,—"But when there is a mutual dispute between the preceptor and the disciple, the father and the son, the husband and the wife, or the master and the servant, no action lies," it has been previously shewn at length that the meaning of the text is, that if an action consisting of the four elements, (*viz.*, the plaint, the written statement, the rejoinder, and the determination of the matter contained therein) be instituted by the sons and the like against the father and the like, then there would be only injury to their welfare in this world and the next: the same would also be the case here. Nor can it be said, be it so; for that would be contrary to all the commentaries.

20. As to the passage in the ancient books, namely, "Sometimes by birth alone,"—that also is to be explained to mean the mediate cause; because the relation of the father and the son is based upon birth, and because the demise of the father is the cause of the extinction of his right.

21. Besides, according to the contention, that the right of the sons accrues by birth, as the ownership of the sons also arises (in the property of the father) while the father is alive, and consequently partition might take place against his will,—therefore the text of Manu, namely, "After the demise of the father, &c.", must be explained (consistently with the contention) to prohibit previous partition by declaring that it takes place by their desire after his demise. But this again would be unreasonable; for it would be liable to the objection of intending a meaning not intended by him. Nor is it reasonable to suppose that the object of the above text is to enjoin the time for partition to be on the death of the father and to enjoin partition. For both the injunctions would be unreasonable, inasmuch as the purposes of partition are (only) secular (and no spiritual good is derived therefrom so as to require any injunction, the natural inducement of man to effect it being sufficient). Neither can it be an obligatory injunction regarding partition, (*viz.*, that it must be effected). For the making of partition is declared by Manu to be optional;—thus he says: "Either let them live together, or let them dwell apart for the sake of religious merit."[1] If it be considered as a restrictive injunction as to the time (for partition), then partition must be made (if made at all) immediately after the death of the father and not afterwards, (for otherwise) there would be a contradiction of the rule, *viz.*, the effect is the immediate sequence of the cause. For there is not in this instance, as there is in that of the sacrifice on the birth of a child, an objection analogous to the hazard of the new-born infant's life (that it may be postponed).

22. Hence the text of Manu and the other sages must be taken, as shewing that sons have no ownership in the property of

[1] Manu, IX. 111.

the living parents, but in the estates of both when deceased. But partition, which may by reason of the ownership (accruing on their death) take place at that time, if desired, is (only) noticed (and is not enjoined, for that is not necessary to be enjoined, which men do of their own accord). Accordingly, also, by reason of the conflict with these texts, it cannot be asserted that right accrues by birth. It will be hereafter stated that degradation, &c., also cause, as death does, the extinction of the right of the father and the like.

Hence it is only on the extinction of the right of the father and the like, that the right of the sons and the like accrues to their property, but not while their right subsists. Consequently, as the existence of the owner and the like constitutes the obstruction in all cases, therefore heritage is in all cases obstructed and never otherwise. Accordingly, the division (of the heritage) into two classes is unreasonable.

23. To (all) this we say :—If it be only on the extinction of the right of the father and others that the right of the sons, &c., accrues to their property, in that case it would follow that while the father and others are alive and free from defect, the sons would be incompetent to perform the ceremonies enjoined by the Vedas,—which can be performed only by (one's own) wealth, and consequently there would be the same (§ 6) conflict with the following Sruti, namely,—" One who is black-haired and to whom a son has been born shall establish the sacred fires." Nor is the restriction (of the application) of the Sruti reasonable, for the purpose of conformity with a meaning of the Smritis which is evolved out of one's inner consciousness. Because the Sruti is, without distinction, applicable to sons, &c., even while the father and the like who have established the sacred fires, and who have performed the first sacrifice, are alive; and because performance of what is enjoined by the above Sruti, by all the learned persons who perform sacrifices,—is observed; and because in the gloss and the commentary, &c., on the subject of conflicts, it has been concluded that the two terms " black-haired" and " to whom a son has been born " are intended to forbid the skipping over the seniors in age, but they are not to be taken in their literal sense which is indefinite. Nor can it be said that, as in our opinion, the father's competence to the performance of sacrifices arises by permission of the sons, so in your opinion the competence of sons, &c., would arise by permission of the father and the like. For, in the opinion of both, the father's right exists in the property, hence the accomplishment of what is of the essence (of sacrifices), namely, the relinquishment of property, is unobstructed; but, according to your opinion, how can the performance of what is of the essence of sacrifices, &c., take place, inasmuchas the sons have no right at all (during the lifetime of the father), nor is proprietary right generated by permission? But in fact, however, the permission of the sons is not even required, the father being independent; but son and the like are on account of their dependence, under the need of permission of the father and the like; this much is the distinction,—in the same way, as women

in performing religious aud charitable acts by means of their own wealth are to take the permission of their husband by reason of the declaration of their dependence. But if the permission be not taken, then the independent conduct gives rise to sin or imperfection in the act, but what is of the essence of such acts is not (on that account) invalid. And the supposition, if made for the above reason, that right is generated by permission of the father and the like, is supported by neither sacred nor profane authority. Therefore even if proprietary right be held to be deducible from the Sastras alone, then anyhow the inclusion of birth also by the term "finding" (*adhigama*) in the text,—"An owner is by inheritance, &c."—is necessary, for the sake of the right of the sons and the like to the performance of sacrifices, &c., even when the father and the like are alive and free from defect,—(the right) which rests on the authority of the Sruti, the Smriti, the Puránas and the custom observed by the learned. It will be shewn that in fact, however, the notion of proprietary right is derived from profane authority alone; and the ownership of the sons, &c., in the estate of the father and the like (during their lifetime) is recognised by people (without the assistance of the Sastras) : and (ownership itself,) by others (who have nothing whatever to do with your Sastras).

24. As also for what has been said (§ 6), namely, that if the right be common as well to the father or the like as to the sons, &c., who are incapable of signifying permission, how can the ceremonies of establishing the sacred fires and the like, take place in the absence of their permission? That has already been almost refuted thus—that the father, by reason of his independence, does not stand in need of the permission of sons, &c., even when they are capable of giving permission; therefore *a fortiori* when they are incapable of giving permission. But the venerable Vijñánesvara says that the competence (of performing sacrifices at the expense of the joint property) follows by force of the very injunction for the performance of them.

25. Hence also the interpretation (§ 10) which is put by Jimútaváhana and Raghunandana upon the text of Gautama,—"By birth alone one acquires ownership of property,"—namely, that birth is intended to be the mediate cause of right,—is useless.

26. As for the text of Sankha, the interpretation (§ 11) given in the Smritichandriká is preferable: but if the interpretation were as put in the Kalpataru, then the terms like "acquired by learning", &c., being imported, (the defect of) the importation, of many terms not occurring in the text would take place. The importation, however, of the term "birth" (in the interpretation given in the Smritichandriká) is not unreasonable, because it presents itself through the suggestion of the terms "sons", &c., and because the importation is of fewer terms.

27. Hence in conformity with the texts (§ 9) of the Smriti which are supported by the Sruti, it is more proper to interpret that the

texts (§ 10) of Manu, Nárada and Devala refer to the absence of independence (of sons, &c., during the lifetime of the father and not to the absence of their right).

28. As also for what has been said (§ 7), namely, that on the hypothesis of right accruing by birth, the texts declaring the impartibility of what has been gifted through affection would become unreasonable; that too is not tenable, for they may be reconciled as having (the sons') permission, and as having the object of establishing the invalidity of the affectionate gift of immoveable property: or, what is declared (in those texts) is the impartibility, by reason of the father's independence, of what, other than immoveable property, has been given by him even without the permission of the sons.

29. Accordingly with regard to immoveable property, there is the following special rule, namely,—"Immoveables and bipeds although acquired by a man himself, shall not be gifted away or sold without the consent of all the sons."[1] And the text, namely,—"The father is master of all the gems, &c.," is, however, more reasonable on the hypothesis that right accrues by birth. Nor is it right to say that it refers only to immoveable property acquired by the grandfather, for both are enumerated in the text, "neither the father nor the grandfather". The declaration that what is even acquired by the grandfather himself is not to be given away when there is a son or even a grandson, indicates right by birth. As in the opinion of the adversary, the father alone has the right to the gems, pearls and corals of the grandfather, by reason of it being so declared; so in this opinion also, notwithstanding the son and the like have a right thereto by birth, co-existing (with that of the father), the father has the competency of making gifts: thus there is no difference.

30. Hence it is to be observed, that although the right of the sons, &c., to the property of the father and the grandfather accrues by birth alone, still for the performance of the necessary religious ceremonies and for the purpose of affectionate gift, maintenance of the family, deliverance from danger and the like that are prescribed by the sacred texts, the father possesses independence in dealing with the (joint) property other than immoveable: but with respect to immoveable property, whether self-acquired or inherited from the father or other ancestor, the dependence on the sons, &c., is alike, by reason of the following text:—"Although immoveables and bipeds be acquired by a man himself, there can neither be a sale nor a gift (of them) without convening all the sons. Those that have been born, as also those that are unborn, as well as those that are in the womb, all of them require maintenance: neither a gift nor a sale"[2] (can take place). To this (rule) again, there is an exception which will be mentioned.

[1] I. Cole. Dig., 411, XIV.

[2] I. Cole. Dig., 411, XIV and XII.

31. As for what has been said (§ 12), namely, that inasmuch as the notion of proprietary right is derived solely from the Sastras, and as the generation by birth of such right is nowhere declared in the sacred texts, how can it be admitted that the right of the sons, &c., to the property of the father and the like, arises by birth? That, however, has been already refuted (§ 23), even granting that the idea of right is derived solely from the Sastras; since in the text of Gautama and others, birth also is declared as a means of right.

32. But, in fact, however, the proposition that the notion of right is derived solely from the Sastras, does not stand the test of reason. Amongst the Mlechchas and the like also residing in their own country, who are devoid of even the slightest knowledge of the Sastras, the expression that "this much is so-and-so's *property*" and transactions, such as sale and purchase based thereupon are found. Therefore it must be admitted that property—which is determined by proprietorship—whereof purchase and the like are the means of acquisition is, by the method of agreement and difference known by them (the Mlechchas) solely through the (profane) authority of the senses and the like, either as consisting in the capability of being dealt with according to pleasure, or as a substance of a distinct category of its own.

33. An enthymeme too based upon this reason has been mentioned by Vijñánayogi, thus:—"Property is known from profane authority, for it effects transactions relative to profane purposes, like rice, &c.;" the instance shows co-existence: "the sacrificial fire and the like, that are known from sacred authority, do not give effect to transactions relative to profane purposes"; this is an instance shewing absence of separate existence. Hence the reason consists in co-existence and absence of separate existence. "Although sacrificial fire and the like effect also transactions relative to secular purposes, such as the boiling of food; still they do so, in the character of fire, &c., as known from profane authority, but not in the character of sacred fire, &c.:" thus there is no infraction of the rule. "But here, purchase and the like are effected by means of gold, &c., not as such but (by gold) as property only." Just as when gold, &c., become the cause of secular works such as ornaments, that is the secular phase (of gold, &c.,) similarly, property also which exists in all (in gold as well as in other things) is only secular. "Since in this world transactions such as purchase are not effected by what is not property."

34. Nor can it be said that in this view, an objection would arise, namely, that the texts of law such as,—"An owner is by inheritance, &c.,"—would be useless as superfluous precepts, affirming, as they do, what is otherwise established by profane authority. For the above texts may reasonably be explained as referring to what conduces to spiritual good or to spiritual evil, like the consideration, in the Smriti of grammar, of the correctness and

incorrectness (of words) consisting (respectively) in the expression of immemorial meaning or its absence.

Thus on the subject of correct expression, (in the Mimámsá) it has been concluded,—"That the Sastras treat of the correctness which is known from the profane authority alone, but which is not discriminated by the people who use correct as well as incorrect words: but not of the correctness which is not deducible from profane authority: for (were it so, then) in the injunction,—'shall speak with correct words', &c., there would be the fallacy of mutual dependence, &c." Similarly, also, is the case here.

35. Accordingly in the Nyayaviveka, Bhavanáthá says:—"The means of acquisition such as birth, &c., are derived from the profane authority: for what are discriminated to be the impressions on the mind of the ancient men, are unimpeachable, and the Smriti has for its object the consolidation of them, like the Smriti of grammar and the like." By the term, "&c.", in the phrase "birth, &c.", are included purchase and the like; and by the term "and the like" in the phrase "grammar and the like" are included music, examination of precious jewels, palmistry, &c. It has been said by the venerable teacher while treating of the subject of Smriti, that desires and the like also which are undoubtedly deducible from profane authority are defined (in the sacred books) for the sole purpose of discriminating them for the benefit of the unthinking.

36. The text, namely, "An owner is by inheritance, &c.", has already been explained (§ 13). The venerable Vijñánesvara, in the Mitákshará, has made the following comments:—"The term 'inheritance' refers to unobstructed heritage; and the term 'partition' refers to obstructed heritage."

The author of the Smritichandriká, however, has, after commenting that the term "inheritance" signifies birth alone which causes ownership of the sons, &c., in the property of the father, and the like, explained the term 'partition' to mean the distribution engendering ownership limited to a definite portion of the wealth of the father and the like. But this is not right. For partition is made of that in which proprietary right has already arisen, consequently partition cannot properly be set forth as a means of proprietary right. Indeed what is effected by partition is only the adjustment (of the proprietary right) into specific portions. If the enumeration be taken to comprise the principal as well as the secondary causes, then there would be variableness in the meaning of the term 'owner'. Accordingly, in the Mitákshará, the venerable Vijñánesvara says, that "the term 'partition' is generally understood to relate to property belonging to several owners, and does not relate to what appertains to another nor to what is unowned"; and that "the right of the sons and the like, by birth alone is most familiar in the world".

37. As also for the text,—(relating to succession), namely,—

"The wife and the daughters, &c.," that again is intended to prevent mistakes with regard to the proprietary right—notwithstanding it is derived from profane authority—when there are many persons who are recognized as heirs by reason of their relationship to the (late) owner. For it is held by all the commentators that the sacred Institutes on Positive law mainly consist of superfluous precepts embodying matters derived from profane authority.

38. The property whereof the means of acquisition are prescribed, is deduced from profane authority alone—is approved also by the venerable Guru. For while setting forth the third interpretation which the aphorism on the desire of acquisition admits of, he, in the following passage, doubts the possibility of the adverse argument, namely,—If restrictions relative to the acquisition of property referred to sacrifices, then there could be no property at all, since proprietary right is not derived from profane authority;—and then shows that the proper adverse argument is—That acceptance and the other modes of acquisition of property are the means of proprietary right, is a fact derived solely from profane authority:—"Nor does (the text relating to) the means of acquiring property concern sacrifices, for (if it did so), there could be no property at all, consequently sacrifice itself could not be performed. This has been irrationally asserted by some one. To say that acquisition does not produce proprietary right, is a contradiction in terms."

The meaning of this passage has been expounded by the commentator in the following way:—"If the restrictions regarding the acquisition of property (laid down in the texts such as,—'An owner is by inheritance, &c.') related to sacrifices (so that they could be performed only by property acquired agreeably to those restrictions), then this text could not signify that the restrictions relate to the means of acquisition of property; for by signifying that the restrictions relate to sacrifices, its power of signification becomes exhausted. That being so, there would be no authority to show that what is gained by acceptance (of presents), and the like, becomes property, consequently sacrifices consisting in the relinquishment of property, could not be performed by that, (*i.e.*, any thing so acquired) which is not property: therefore, to what does the text relate embodying the rules regarding the acquisition of property? (*i.e.*, does the text ordain that nothing but what is acquired in the modes mentioned, becomes property or that sacrifices can be performed by no other property than what is so acquired?). This is the adverse argument, the possibility of which is doubted: and the above is the meaning of the doubt. The passage beginning with 'This has been irrationally asserted, &c.', constitutes the answer to it; its meaning is as follows: inasmuch as it is established by profane authority, that acceptance and the like, are the means of proprietary right, that cannot be a subject of the sacred books; consequently the text signifies only that the rules have reference to sacrifices: consequently neither is there the impossibility of performing sacrifices, nor are the restrictions useless."

Also in stating the conclusion, the venerable Guru does, upon the very assumption that the notion of property is derived from profane authority, explain the purpose of the disquisition thus,—"Hence a breach of the rules affects the person, not the sacrifice." The meaning of this passage also has been thus explained:—"If restrictions respecting the acquisition of property related to sacrifices, then a sacrifice might be performed with such property only as was acquired consistently with the restrictions, and not with property acquired by violating the restrictions; but the fault arising from the violation of the restrictions would not attach to the person (who performs the sacrifice). This is agreeably to the adverse argument. But what is affirmed in the conclusion is, that inasmuch as the restrictions regarding the acquisition of property acquired by infringing the restrictions: therefore the fault of violating the restrictions attaches to the person only." It is here admitted that even what is acquired by infringing the restrictions, becomes property; because otherwise the statement that sacrifices may be performed thereby would be contradicted.

39. While treatiug of the very same subject, the venerable Kumárilasvámin also is of the opinion that the notion of property is derived from profane authority. And this is easily accessible to those who feel curiosity for the valuable exposition of the subject (given by that venerable author).

40. Accordingly, in the Sástradípika, Párthasárathi says:—"Acquisition which takes place out of (man's) desire (for property) is not derived from the Sastras." It takes place from (human) desire as one of the ends of man, for property which when acquired delights the man, is from perception, known as one of the ends of man, it cannot from any inference be deemed as having for its sole object the performance of sacrifices. Therefore, it is to be remarked, that property which is one of the ends of man, is used for the performance of sacrifices, in the same way as for any other transactions, for a sacrifice also is one of the transactions of man: but property is not subservient to sacrifices only, because, if that were so, no sacrifice could take place inasmuch as life (of man) would be extinguished (for want of property to sustain it, consequently who is to perform sacrifices?) This (explanation) is given by Praghattaka. Here by refuting that acquisition is deduced from the Sastras, it is very clearly indicated that the notion of property and the means of its acquisition is derived from profane authority. It is further stated by him:—"Hence acquisition of property,—which is one of the ends of man,—thus becomes one of which the object is temporal. But the restrictions (relative to acquisition of property), having no temporal object, must have some spiritual object. The spirituality again of the restrictions, referring as they do to acquisition—which is an end of man,—must be taken to affect the man alone; hence it is indicated that a person acquiring (property) in any other mode (than what are prescribed by the Sastras) commits sin."

41. Hence also, it cannot be apprehended that the texts like "An owner is by inheritance, &c.", are unnecessary; since, by declaring as superfluous precepts, that inheritance and the cause of proprietary right,—a fact deducible from profane authority they intend to lay down restrictive rules with a view to prohibit any other means of property (declared in the texts): like the restrictions relative to the direction of the posture of taking food which produces satisfaction of the appetite. The difference in the opinions of Bhatta and Guru consists in this only: (the one says) that the acquisition of property alone forms the instance in the disquisition of what affects sacrifices and of what affects the person (performing sacrifices); but the restriction is set forth as the argument of the adversary: (while the other says) that the restriction alone forms the instance there. But both of them concur in holding that property is derived from profane authority. This is the substance (of what they say). The arguments for and against their respective opinions are dwelt upon in the works of the learned on the subject, but are not set forth here as they do not bear upon the point in question.

42. Hence is refuted also the argument of Dhâresvara and the author of the Sangraha, namely, that if the notion of property were derived from profane authority, then what is obtained by means of theft and the like would become property. For in the world, theft and the like are not recognized to be the means of proprietary right, inasmuch as such expression is used (in cases of theft, &c.), as that "this property belongs to another and not to this person." Again, a doubt relating to proprietary right in the form,—'Whether this property belongs to this person or to another'—(a doubt) which arises from a doubt regarding the (person's) means of acquiring the property, such as purchase—is not unreasonable. Hence also the argument, that if the notion of proprietary right were derived from profane authority, then no one could say "my property has been stolen by him", for the property (which is the subject of theft) would belong to the thief alone,—entirely falls to the ground.

43. As what has been said by the author of the Sangraha (§ 17), namely, that since the application of property is laid down by the Sastras, therefore it cannot possibly be said that property consists in the capability of being dealt with according to pleasure; because the use to any purpose according to one's pleasure is impossible. This too is only plausible. For we say, not that it is what *is* used according to pleasure, but that it is what is *capable* of being so used. (Were it) otherwise, (then) when the will (to use property in a particular way) is restrained for fear of the king and others, it would cease to be property; moreover, this anomaly would result, namely, that the same thing would be one's property when he desires to use it, and cease to be so while he feels no such desire. It may be that sometimes property is not dealt with according to pleasure, by reason of rules (regarding the use of property) laid down by the

Sastras, as by reason of the restraint put by the king and others, but still the capability of being dealt with according to pleasure remains unaffected. Hence even if property be used by a person of perverse character in a way contrary to the Sastras, still it would not be a case of dealing with what is not property: but only sin would be incurred for violating the rules prescribed by the Sastras. For there is certainly the capability of being so dealt with arising from its being acquired (by him). Accordingly, it has been said also in the Nayaviveka, that "what is acquired by one is capable of it by him." "Capable of it" signifies, capable of being dealt with according to pleasure. (It is) similar to the capability in a seed of producing sprout,—resulting from the seed as such, although it does not produce a sprout owing to any obstacle. But in reality there is indeed a difference between the distinctive feature of property and the capability of being dealt with according to pleasure, in the same way as between the distinctive feature of seed and the capability of producing germ; otherwise so long as the *differentia* of the capability is unknown, the capability (itself) will remain indeterminate. Hence like the caste of Bráhmins, property is certainly a substance of a distinct category of its own, which is liable to production and destruction and is manifested by the cognizance of its means. The only distinction is that the caste of Bráhmins being a class is eternal. This is explained in the treatise on the subject and in the Lílávati and other works.

44. The object of the disquisition here, namely, whether the notion of proprietary right is derived from profane authority or from sacred authority has been explained in the Mitákshará, thus: —"If the notion of property were deduced from sacred authority alone, then by reason of the text of Manu, namely,—'If Bráhmins acquire wealth by means of a blameable act, they become purified by the relinquishment of that wealth, with prayer and rigid austerity,'[1]—a person having no right to the property acquired by means of improper acceptance of presents, or by other means which are prohibited to that person,—in the same way as to what is acquired by theft and the like, such property would not be partible even among his sons. But if the notion of property be derived from profane authority, then the father's right accrued to what was so acquired; consequently, that being paternal property, may be divided by his sons. The acquirer alone is liable to perform expiation for the sin incurred in consequence of the violation of the prohibition: but his sons, who acquire that property by means of inheritance, which is not unlawful, are not required even to perform the expiation. Since Manu says:—'There are seven lawful means of the acquisition of property, namely, inheritance, finding, purchase, conquest, investment, performance of (religious) acts (for others), and acceptance of presents from proper persons.'[2]—

[1] Manu, XI. 194.

[2] Manu, X. 115.

'Investment' is the laying out of property for the purpose of profit; 'performance of acts' means, officiating as a priest; of these the three beginning with inheritance are lawful to the four classes alike; but conquest is so, to the Kshatriyá; and investment when made in person, to the Vaisyá and the Súdrá; but when not carried on personally, or even if carried on personally in times of distress, to all the classes; but the performance of religious acts (on behalf of others) is peculiar to the Bráhmins alone: this is the distinction."

45. To this, the author of the Madanaratna raises the following objection:—Even if the notion of property be taken to be derived from sacred authority alone, still the prohibition of the acceptance of presents from improper persons and of the other reprobated means, intends not that they do not produce the proprietary right, but that they engender merely sins. Because by the following texts, namely,—"A Bráhmin taking food or accepting presents from any person, when in distress, is not tainted with sin, for he is equal to the burning sun; a twice-born man is not stained with sin, if he carries on, but not personally, money-lending, agriculture, or trade, or does it personally at a time of distress,"[1]—it is declared that he "is not stained with sin". Hence it appears that no sin is incurred at a time of distress, consequently it is clear that sin is incurred in the absence of distress; for it is proper that the prohibition and the exception to it should refer to the same subject. Accordingly, when there is no distress, expiation consisting of prayer and rigid austerity after the abandonment of the property, —only has been ordained. But with regard to the acceptance of presents from improper persons, and other reprobated means of acquisition, there is no text whatever providing punishment, similar to that in cases of theft and the like. Hence, agreeably to both the adverse opinion and the conclusion, there being no difference as to the generation, by the acceptance of presents from improper persons and other reprobated means, of the proprietary right of the person acquiring by such means, the partibility too amongst the sons and the like, of what has been so acquired is alike (in both opinions). Therefore, what has been said to be the object of this disquisition is not reasonable.

46. What we say here is this. As in the opinion of those who assert that the notion of property is derived from sacred authority alone, the prohibition of theft and the like implies the non-generation of proprietary right, the infliction of punishment and the liability to penance; similarly, let the prohibition also of the acceptance of presents from improper persons and of the like imply the same. Again, in the event of distress, as by virtue of the exception laid down in the following text,—*viz.*, "Thus likewise may a person who has not eaten at the time of six meals, *i.e.*, has fasted for three days together, steal at the time of the seventh meal, from a man of mean conduct, (so much as is sufficient for that

[1] Yájñavalkya, III. 41, 42.

day only) without intending to provide for the morrow: and if the owner asks, it should be confessed to him when he asks,"[1]—there is none of those three incidents in theft, let the same be the case in the acceptance of presents from improper persons, and in the like. For otherwise, in both the instances, the five great sacrifices and the like could not be performed by such property. It may be objected that upon the assumption that the notion of property is derived from the Sastras, how can the prohibition of theft which is not recognized (by the Sastras) as a means of property,—be justified? Hence it must be admitted that there is an indirect recognition of it by reason of its inclusion under "seizure". For otherwise the prohibition itself would be unreasonable. Also for fear of the objection that in the case of the prohibition of what has been enjoined by the Sastras, obedience would be optional, as in the instance, "The initiated are not to perform the *homa*," it must *ex necessitae* be acknowledged either according to the opinion of the author of the Bháshya, that the injunction refers to cases other than what are prohibited, or according to the other opinion, that agreeably to the rule governing general and particular provisions the prohibition which is particular supersedes the general injunction (in the cases to which the prohibition refers). But the acceptance of presents, &c., as means of acquisition for Bráhmins, &c., have been declared (by the Sastras); hence in the event of distress and in its absence, the exception (to the prohibition) and the prohibition respectively are very reasonable. If it be objected that, in that case a Bráhmin would by accepting presents from improper persons and by personally carrying on trade and the like, otherwise than in the emergency of distress, be liable to judicial punishment. (The answer is) be it so; for it is not held by any one, that there is no judicial punishment for one who renounces the duties of his class. The punishment again which is to be inflicted in particular cases, is what is generally provided, while in some other cases it is specifically laid down: but this is a different question altogether. Hence there is also another defect in the opinion of those who maintain that the notion of property is derived from sacred authority, namely *multiplicity*, inasmuch as the prohibition of theft (according to them) implies three things (namely, the non-generation of property, the infliction of punishment and the liability to penance); as well as the *multiplicity* consisting in the admission of the limitation of a general proposition. But in the opinion of those who assert that the notion of property is derived from profane authority, the prohibition implies punishment and sin only; because it is a matter derived from profane authority that theft and the like are not the means of property; and as the prohibition refers to what may happen under the influence of the springs of human action, there is no defect in the shape of the admission of the limitation of a general proposition. Hence (in this opinion) there is *fewness* (of assumptions as opposed to *multiplicity* in the other opinion). Therefore, if the notion of property were held to

[1] Manu, XI. 16 and 17.

be derived from sacred authority alone, then acceptance of presents from improper persons, and the like being not (lawful) means of property, the father could have no right to what is so acquired; consequently, as there can be no partition of the property acquired by the father by means of theft and the like, so also what has been acquired by means of acceptance of presents from improper persons would be impartible. But if the notion of property is derived from profane authority, then as these also are in the world considered to be legitimate means of acquisition, therefore it is established that what is so acquired is partible. Hence the object (of the disquisition) as set forth in the Mitákshará is perfectly consistent with reason. The object (as set forth in the Mitákshará), however, is illustrative; for agreeably to the adverse opinion, the sons, &c., would have been liable to punishment and penance even in taking paternal property acquired by improper acceptance, &c., just as in taking what has been acquired by the father by means of theft and the like. (To obviate) this too is to be properly considered as an object (of the disquisition) by reason of what has been said (in the Mitákshará), namely, "The acquirer alone is to perform the penance."

47. But this question ought to be solved here,—namely, if the notion of the property is derived from profane authority, and it is a matter established by profane authority, that theft is not a means of property, then, when theft is allowed in the emergency of fasting for three days together, whether or not property arises in what is stolen accordingly. The first (alternative) is not tenable; for it being established by profane authority that theft is not a means of property, the generation of property by theft cannot be maintained. Indeed a fact against the evidence of the senses, such as the generation of acid curd by water, cannot be established by a thousand texts. Neither is the second tenable; for the five great sacrifices which are principally considered cannot be performed by what is not property. Nor can it be said that let that stolen property accomplish only the gratification of the appetite and not any religious rite; because that would be contrary to the practice of the learned, and because it is ordained that,—"The learned never partake of it without performing the five great sacrifices: the very same food which a person partakes in this world, is offered to his gods." Accordingly, the following anecdote is related in the Puránas:—"When Visvámitra having stolen a hind leg of a dog from the house of a butcher, and having made up his mind to partake of the same and to offer a portion of it to Indra and the other gods, was about to present to the gods their share, then Indra and the other deities created rain, and abundant crops instantly sprang up." But if property be held to be matter derived from the Sastras, then the generation or the non-generation of property by theft and the like,—as is laid down by the Sastras, are not contradictory. While those who maintain that the notion of the property and the means of its acquisition are derived from profane authority, are fixed on the horns of a dilemma.

48. The above argument we meet thus: Although it is not deduced from profane authority, that theft is a means of right, still it is derived from the very text cited above, which authorizes theft at the time of the seventh meal, by one who has not taken food during the time of meals. But the position that the notion of property is solely derived from the Sastras is untenable, inasmuch as purchase and the like transactions that can be accomplished by property would be unaccounted for among those who are ignorant of the Sastras. Hence the prohibition of theft indicates punishment and sin only; but it does not imply non-generation of right, since generation of right by theft is not recognized. As for instance, although the class Bráhmanyam is perceptible in all (the individuals constituting the class) still in so far as regards the superiority of the caste, it is deduced from the Sastras alone; because the rules regarding the superiority and inferiority of men are derived solely from the Sastras. Thus the venerable preceptor says—"But here this much only is to be admitted as derived from sacred authority, since this rule regarding the superiority and inferiority of men is not deducible from profane authority." He further says:—"Then again, the class Bráhmanyam is manifested in an individual descended lineally from a particular person; hence what is derived from the Sastras is only the relation between that which is manifested and that whereby it is manifested, (*i.e.*, between the class Bráhmanyam and the descent from a particular person): and the class Bráhmanyam in an individual described above, is certainly perceptible to a person who is conscious of that whereby it is manifested; inasmuch as there are all the conditions for the perception of the class after the perception of the individual." In the present case, however, unconditional theft alone being considered to be not a cause of property, only the generation of property by theft under the circumstances mentioned is taught by the Sastras. Nor can it be said that it is against the evidence of the senses, and what is against the evidence of the senses cannot be taught by a thousand texts. Because the non-generation too (by theft, of proprietary right) is not a matter derived from perception: but inasmuch as what is a means of property is deduced by the method of agreement and difference of that means and of the free use of property acquired thereby,—the fact that theft is a means of property is not deduced, since stolen property (as such) cannot be applied to any use. Just as the production of a son by means of the sacrifice for a son,—a fact which is beyond profane authority, is taught by the Sastras, notwithstanding there are visible means for the generation of a son; let the same be the case here also. As for the sacrifices aiming at heavenly happiness, which are purely spiritual in their consequences, there is in addition the absence of visible means: but that is a different question. As (for another instance) the fact that the reviving *mantras* have the power of producing the burning property (of fire) which has been counteracted by any neutralizing agent is known from the Sastras such as the Atharva, since it is not deducible from profane authority.

Because it cannot be asserted that the reviving power is anything more than the causality of an effect counteracted by a neutralizing agent; since (if the power be held to be a separate substance, then) there would be great multiplicity in supposing the destruction of the power and the production of it.

49. As for what Jímútaváhana has, while refuting the position that right accrues by birth, said,—after explaining that the intention of the ancient text, *viz.*, "Sometimes by birth", is to indicate the mediate cause, since birth is the cause of the relation of the father and son and the death of the father is the cause of the (son's) right;—and anticipating the objection, *viz.*, how can the son's right arise by the father's act consisting in the generation? —namely:—"The production of the right of one person even by the act of another is not inconsistent, it being based upon the authority of the Sastras; and that is also seen in the world, since in the case of donation, the donee's right to the thing arises from the act of the donor, namely, from his relinquishment in favor of a sentient being. Neither is the right (of the donee) created by (his) acceptance, for then the acceptor himself would (virtually) be the donor; since gift consists in the effect of raising another's right to the property, and that effect would here depend on the donee. Just as a sacrificer (*i.e.*, the person at whose cost and for whose benefit a sacrifice is performed),—though making relinquishment of (his right) to the things offered to the gods—is not called the *hotá* (the performer of the *homa*,) but the priest alone is denominated the *hotá*, as performing the act of throwing (the things in the sacrificial fire) which is the reason of the name *homa* (being applied to the ceremony). The same would be the case here. Besides the term 'gift' is used even previous to the acceptance (by the donee), in the following (sacred text,—'Thinking of the intended donee in the mind shall pour water on the earth: an ocean has a limit, but a "gift" has none).' But is not receipt acceptance? For the affix in the word *svíkára* (acceptance) implies a thing becoming what it before was not; and the act of making his own, what before was not his, constitutes acceptance or *svíkára*. How then can right (of the donee) accrue antecedent to that? The answer is, though right has already arisen, still it is by the act of the donee consisting in the knowledge that the property is his own, rendered capable of being dealt with according to pleasure; and such is the meaning of the term 'acceptance' (*svíkára*). From its association with officiating as a priest and teaching, receipt (*pratigraha*) is, without question, a mode of acquisition, though it do not immediately create proprietary right: for in the case of officiating as a priest, and so forth, right (in the wealth so gained) arises solely from the gift of the fees. Or the survival of the son at the time of the father's death, may constitute his acquisition. Besides in the case of property left by a brother or any other relative, the right of the rest, the brothers or other heirs must, however reluctantly, be acknowledged to arise either from the death (of the proprietor) or from the

survival of the rest at the time of his decease. Let the same be the case here also."

50. But this is not tenable. For the argument, "it being based upon the authority of the Sastras",—has already been obviated by the demonstrated conclusion that the notion of property is derived from profane authority. As also for what has been said in the passage,—"And that is also seen in the world, &c.,"—that too is only specious; for should the donee refuse to accept, his right certainly does not arise; again, if by (mere) relinquishment in favor of a particular person, his right accrued, notwithstanding his refusal to accept (the gift), then it would follow that the donor could not possibly grant (the property relinquished in favor of a particular person) to any other person. As also for the argument, "for then the acceptor himself would (virtually) be the donor"; that again is not consistent with reason; because, gift being an act whereof the effect is the generation of another's right, the term "gift" implies the act of inference, &c., (by the donor) in favor of the acceptance by the donee, but the production of that effect is not possible without the acceptance by the donee; hence the act of the donee completes the gift, but that alone does not constitute the gift. As also for what has been said in the passage "just as, &c."—that too is not correct. For the distinction does not obtain in the *agnihotra* and the like *homas* which are (personally) performed by the sacrificer; again, in the *darsapúrnamása* and other sacrifices where the relinquishment only is made by the sacrificer, but the offerings are (actually) thrown (in the sacrificial fire) by the priests, the function (of the priests) being distinct (from that of the sacrificer,) the use of the term *hotá* (for a priest) implying that function, is not open to exception. The term *homa*, however, does not signify the throwing (by the priest) of what has not been relinquished (by the sacrificer). But whether that relinquishment which is the distinctive feature (of a *homa*) is carried out through the agency of one's self, or through the agency of another person, that makes no difference. Hence a sacrifice (*yága*) does not depend, for its completion, on the throwing (of offerings), but a *homa* depends on that alone. The act of the donee, however, is the *sine qua non* of gift, for without it gift cannot be accomplished.

Again, what has been said in the passage, "Besides, &c.", that also is nothing. For abdication alone is ordained therein, but not gift; accordingly, it has (subsequently) been said that "the donor reaps its fruit", for otherwise this (portion) would be superfluous. Had the fruit of gift been otherwise deducible in what is intended for gift, the passage "the donor reaps its fruit", would have become useless. Hence what is intended by the verb "give" (in the term "gift") in the passage cited before, is abdication only—consisting of the pouring of water, in favor of the intended donee, but the completion of the gift takes place only in case of acceptance by the donee of what is so abdicated. This is the best interpretation. Accordingly, in the formula for declaring the

intention (of making a gift,) the expression used by the learned is, "I abdicate", and not "I will give", or "I give". Hence, although the fruit of gift arises (before acceptance), still because the right of the donee accrues from acceptance, therefore the proposition that acceptance is an acquisition means an act producing property. Accordingly Prabhákara says:—"This has been irrationally asserted by some one: to say that acquisition does not produce property is a contradiction in terms." The text of this has already been explained: Moreover, if acceptance, consisting in the knowledge that this property is mine, did only render that property to be capable of being dealt with, wherein the right accrued merely by the act of the donor, then the term "acquisition" as applied to acceptance would be metaphorical in its meaning; and the bestowal of that property on any other person (in case the intended donee refuse to accept the gift) would be, as mentioned before, unreasonable; also in case of his non-acceptance, the destruction of his right already produced will have to be assumed. Nor can it be said that it must be acknowledged by you also, that by the act of the donor his right being extinguished, a common right of donees is produced; otherwise if his right be extinguished and no other's right accrue, then the thing being without an owner, the right of any person might, by means of seizure, &c., arise in that thing, just as in grass, fuel, &c., of a forest, which have not been appropriated, and the preservation (of the thing by the donor so long as it is not given to any other person) would be impossible: so also in our opinion, the right of a particular person produced on the abdication in favor of that particular person, is extinguished by his non-acceptance, and the right of another arises by his acceptance; thus there is no such contradiction as the destruction of a common right and the production of an exclusive right (which you cannot but admit). Because a common right in such a thing being not recognized, the production thereof is without authority, and is neither acknowledged by reason of *multiplicity* (of assumptions). But notwithstanding the extinction of the donor's proprietary right, consisting in the capability of being dealt with according to pleasure, the gift itself being incomplete in the absence of the effect, namely, the production of another's property, the donor who aims at attaining the merit held out by the injunction (for gifts) certainly retains the right of preserving (the subject of the gift) till the bestowal of the same on some other fit person; in the same way as (a sacrificer has the right of preserving) the clarified butter poured on the sacrificial fire until it is burnt to ashes, by reason of the declaration of imperfection which would otherwise be the consequence of non-conformity with the prohibition of (the offering) being touched by what should not be touched. Hence it follows that although another's right be not generated, still there is no harm in not preventing (by the supposition of a common right) the (supposed) consequences of the thing being without an owner, and of its seizure. Upon this alone is based the practice of the learned, consisting in the preservation of the subject of gifts (to

men and gods). Nor can it be argued that the injunction being assumed by us to refer solely to abdication, the fact of the production of auther's right would not at all be important, because abdication, such as is described above, is what (we say) is intended by the injunction, for otherwise in the case of *homa* also, the state of being burnt to ashes would be unimportant.

As for what has been said, namely,—from its association with officiating as a priest and teaching, acceptance though it do not immediately create proprietary right, is still an acquisition in a metaphorical sense only,—that also is from ignorance. Since in the case of officiating at a sacrifice, the shares to which the priests and others are entitled, are, at the time of distributing the fees (*dakshiná*), allotted to them in the shape of wages. Accordingly, in the aphorism of Jaimini, *viz.*, "Salary is the service of a master", the use of salary (to signify the fees) has been ascertained: the details, however, are to be found there. Salary is no other than the wages causing inducement of a servant. So also, in teaching, the pupil at the end of his education gives to the teacher such wages for teaching as satisfies him. But in case of regular service for wages, the paid tuition is *quasi* degradation. Hence as distinguished from acceptance as well as from service (*nirvesa*) implying (regular) wages, officiating at a sacrifice and teaching have been separately enumerated as being a mixture of both. Hence these too are acquisitions in the primary sense. Accordingly, also, the term *honorarium* (*dakshiná*) is applied to what is given to a priest and a teacher.

As also for the argument that it is undisputed that in the property left by a brother or any other relation the right of the rest of the brothers or other heirs is produced either by the death of the owner or by the survival of the brothers, &c., at the time of his decease; therefore also in the case of sons, &c., let the death of the father, &c., or the survival at the time of their decease, be the cause of right, but not the birth of the sons, &c., which is not applicable to all cases;—that also has been already confuted by showing that it must be admitted that birth is a cause of right.

51. As also for what has been said, namely, that if birth be held to be a cause of proprietary right, then the text of Manu, *viz.*,—"After the father and mother, &c.," cannot consistently be explained;—for if it be considered to mean the prohibition of previous partition, then the objection would arise that it intends a meaning not its own; and as the purpose of partition is secular, an injunction for partition, as well as an injunction for its time, is impossible. Nor can it be taken to mean an obligatory injunction regarding partition which stands (but for this injunction) optional, for in that case there would be a conflict with the injunction regarding dwelling together; therefore, it must be admitted that the text is intended for establishing that while the father and the mother are alive there is no ownership by birth to their property, but that it

is on their death that the right of the sons, &c., accrues to their estate.

52. The above argument is extremely unsound. Because the objection that it imparts a meaning not its own, is equally applicable (to the view taken by him); and because there can be no incongruity in considering the above text to be an injunction as to the time for partition, inasmuch as there was no independence (of the sons) before (the death of the father); and because even if it be held as a superfluous injunction regarding the time (for partition) which proceeds from the desire (of the co-sharers for partition) there can be no impropriety, it being a text on positive law.

Hence is obviated also the objection that partition would be admissible only at the moment immediately following the father's decease, for there is not in this instance any particular objection like the danger to the new-born infant's life in the case of a sacrifice on the birth of a son,—against the immediate sequence of the effect (when the cause is present). Neither is the causality of the father's decease indicated by the injunction regarding the time for partition; for otherwise, as the effect must necessarily follow the cause, it would be sinful if partition be made after the death of the parents (and not immediately on their death). Moreover, the extinction of the father's right arises also from degradation and retirement: but the right (of the sons) by birth holds equally good (in these cases). In the case of degradation, however, the extinction of right and the disqualification for participation arise only if expiation be not performed. Otherwise penance too, which can be accomplished with (one's own) wealth, could not be performed by the parents with their own wealth.

Accordingly, (it must be admitted that) the following text also, namely, "When the mother is past child-bearing, &c.",[1] declares an injunction with reference to the time for partition. There is not, however, in that event the extinction of right as in degradation, &c.: but the extinction of (the father's) right is deduced solely from profane authority as well as from the prohibition of this) participation, as in the case of a brother and others (who are excluded from inheritance by reason of disqualification); this will be mentioned (hereafter).

53. Moreover, Jímútaváhana himself appears to give up his prior contention, and to admit partition by sons even when the father's right is not extinguished; for he has, after having asserted that—"Thus there are two periods of partition: one, when the father's right ceases; the other, by his choice while his right endures,"—and then meanwhile having found fault with the three periods of partition mentioned in the Mitákshará—come to the conclusion that,—"Therefore two periods of partition are rightly

[1] Nárada, XIII. 3.

affirmed: one, when the father's right is extinguished by degradation, extinction of temporal affections and death; the other, by the choice of the father while his right subsists." Now how does (in the latter case) the right of the sons arise in the property of the father? And how is it that there is no conflict with the texts ordaining absence of ownership (of the sons) while the parents are alive? Partition being impossible of what is not property, how can partition be made by them? Where is the consistency of one part with another of his (Jímútaváhana's) own book? For (in another part) he says, "The cessation only of the father's right is intended by the text, 'After (the death of) the father and mother, &c.'; with this purpose the term *after* is used instead of the term *dead*: the meaning being after the cessation of the father's right and the cessation of the father's right arises as well from his degradation and extinction of worldly affections as from his death, &c."

Again, he says:—"Here also, as it is indicated that the son's right in the father's wealth arises from such causes as the extinction of the temporal affections, this is one period of partition." Now if by the term, "from such causes as the extinction of the temporal affections", the cessation alone of the father's right be intended, in that case it is contradictory to what has been said, namely, the other period of partition is by the choice of the father while his right subsists.

Again, when he maintains that the survival alone of the sons and others at the time of the extinction of the father's right is a means of acquisition, how can he assert the right of the sons to the property of the father while the father's right subsists? Certainly the father's right cannot (according to his opinion) cease simply by reason of the mother being past child-bearing in the absence of the father's retirement to a forest; therefore, it becomes difficult to apply the term 'heritage' to the property whereof partition is made while the father's right is not extinguished; for the meaning of the term heritage as explained by himself is wanting, *viz.*, "The term heritage is technically used to signify wealth in which right dependent on relation to the former owner arises on the extinction of his right." These and similar confusions arise (in pursuance of the doctrines propounded by Jímútaváhana).

54. But it is to be observed by those that are unprejudiced that every thing becomes consistent if right by birth be admitted. Accordingly, in the Mitákshará and other works it has been said that the term *heritage* signifies that wealth wherein another's right arises dependent on relation to the former owner: but the phrase "on cessation of the previous owner's right" has also not been inserted in it. Hence it is established that heritage is twofold.

The argument in support of the three periods of partition mentioned in the Mitákshará, will be set forth at length when that subject will be dealt with; there is no use of discussing here what is incidental to the subject under enquiry.

55. The term 'partition' has been explained in the Mitákshará, thus, "Partition is the adjustment into specific portions, of divers rights arisen in the entire estate." But Jímútaváhana introduces this definition as the opinion of the adversary in the following passage,—"Nor can it be affirmed that partition is the adjustment into a particular portion of that right which all the co-sharers have through the sameness of their relation over the entire property;" —and then finds faults with it, thus,—"Because the relation (of one co-heir to the owner) opposed by the co-existence of another relative produces a right—determinable by partition—to portions only of the estate; for (otherwise) there would be *multiplicity* in the assumption of the accrual and extinction of a right to the entire estate; and it would be useless as there would not result the effect, *viz.*, the power of dealing with the property according to pleasure"; and then goes on,—"What we say is, that partition consists in the act of manifesting, by the casting of lot or otherwise, the right which had arisen in lands, gold, &c., and which extended only to a portion of them, and which was previously unascertained, being unfit for exclusive appropriation, because no evidence of any ground of discrimination existed; or partition is the act of ascertaining the right or of making it known,—by the derivation of the term."

56. The author of the Dáyatattva has referred to this view of Jímútaváhana, and censured it thus:—"For how may it be certainly known, since no text declares it, that the lot for each person falls precisely on that article which was already his.

"Again, if wealth be gained after the father's death by a brother riding one of two horses, which belonged to the father, it is universally acknowledged, that two shares of it appertain to the acquirer; and one to any other co-heir. In such a case when the original property is subsequently divided, if that very horse be obtained by the acquirer, then according to the opinion of those who affirm partial rights, the horse was already his; why then should another brother share the wealth gained by him? But if the horse be obtained by another, equal participation of wealth so acquired would be proper, since it is gained by the personal labour of the one and by the work of a horse belonging to the other.

"But in fact, partition is the adjustment by lot or otherwise into a right over a specific portion, of that right which did, by reason of the same relation of the co-heirs, accrue to the whole property, upon the extinction of the right of the previous owner.

"Thus, even the accrual and extinction of rights over the entire estate are to be admitted, in the same manner, as in the case of the reunion of co-heirs, the destruction of rights over portions, and the production of rights over the entire estate, are acknowledged.

"This too is (in a manner) acknowledged by the author of the Dáyabhága who himself writes:—In the following text of Brihaspati, namely: 'He who being (once) separated dwells again through affection, with his father, brother or paternal uncle is

termed reunited', because the father, the brother, the paternal uncle and the like, are from their birth likely to be united as regards the property acquired by the father or the grandfather; they alone may become reunited, when being once separated they annul, through mutual affection, the previous partition with the agreement to this effect, that the wealth which is thine is mine, and what is mine is thine, and remain like one householder in any transaction. But not an association of merchants who, unlike the co-parceners, are by the mere union of stocks formed into a partnership, nor the mere union of estate of separated coparceners without the stipulation based upon affection (are to be looked upon as instances of reunion).

"By reason of the right being common, the text of Kátyáyana, which says: 'A coparcener is not liable for the use of any article which belongs to all the undivided relatives,' becomes consistent in its literal sense; inasmuch as his own right extends over every article; accordingly there can be no theft in such a case, as will be shewn hereafter.

"Similarly, also, by the text of Nárada, namely: 'Separated, not unseparated, brothers may reciprocally bear testimony, become sureties, bestow gifts and accept presents,'[1] the prohibition of mutual gift, &c., amongst undivided coparceners becomes logically consistent; because (in such a case) there is an impossibility of gift and acceptance, inasmuch as the acceptor had a right to the property given, even before a gift of it was made.

"All the coparceners are entitled to the fruits of all acts, either temporal or spiritual, which are performed with the use of the joint property; since their right is common. This is affirmed also by Nárada: 'Among undivided brothers duties continue common; but when partition takes place, their duties also become different.'

"Vyása ordains: 'Let no one without the consent of the others, make a sale or gift of the whole immoveable estate nor of what is common to the family.' Here, from the use of the adjective 'whole', it appears that the right of each parcener accrues to the entire estate.

"Therefore, when there are two persons equally related to the deceased, each of them considers the property left by the deceased, to belong to himself as well as to the other co-heir. Gift and the like by the one for his own purpose, is prohibited, should the other's consent be wanting.

"Therefore it is established that the right does not accrue to a fractional portion."

57. It appears that this is subscribed to also by the author of the Mitákshará; for, he says: "Partition is the adjustment into

[1] Nárada, XIII. 35.

specific portions, of divers rights which have arisen in the entire estate."

But what is to be decided here is this: Whether ownership inhering in the owners and determined by the whole of the property, also whether property inhering in the entire estate and determined by the owners, exists jointly in all or exists separately in each? The first (alternative) is not tenable. Since in case of destruction of any one of those in which the ownership or the property inheres, there would be great *multiplicity* in assuming their destruction, and the production of them in all the remaining ones; and since the dealing with any article by any one (of the co-owners) would be impracticable in consequence of the want of power (in any one co-owner) of giving away or selling or using in any other way, according to pleasure. Neither is the second (alternative) tenable; because on partition the destruction and the reproduction of all of them would have to be assumed; and because that would be contrary to the following passage (of the Mitákshará), *viz.*, "Partition is made of what was property, but property is not generated by partition".

What we say here is this:—There are certainly rights existing separately in each, by reason of the sameness of the relation: when partition takes place amongst the co-owners, the right of each ceases to what is allotted to the others in the same way as by death, retirement and the like: so there is no inconsistency. And this is what is meant by "adjustment"; otherwise, the generation of right to a specific portion would have been used. Accordingly, the cessation only of the right is assumed, but the production of a different right is not assumed. Agreeably to the opinion of Jímútaváhana, it being not determined previous to partition, as to what property the right of a co-sharer accrues in reality, there would be an end of all temporal affairs as well as spiritual ones enjoined by the Sruti and the Smriti;—which can be performed only by wealth. You (Jímútaváhana) impute to the author of the Mitákshará, the defect of *multiplicity* for his assumption of the destruction and the production of rights, but yours is a still greater one (that of inconsistency) when you admit the production of a different right of each (of the co-sharers) in the property of the others by consent given by all (on re-union) after partition. You ascribe uselessness to the right over the entire estate by reason of its unfitness for use: but the same is equal if the right be admitted to arise in a fractional portion. There is no use in spinning out the matter.

CHAPTER II.

Law of Partition.

PART I.

1. Now are determined the periods when, and the persons by whom, partition may be made.

On that subject Manu says:—"After (the death of) the father and also the mother, the brothers being assembled together shall equally divide the paternal estate; for they are powerless while those are alive."[1]

"Paternal" signifies, belonging to the parents, since both are previously mentioned: hence by the phrase "after the father", a period of partition of the paternal property is expressed; and by the phrase "after the mother", a period of partition of the maternal property is shown; the term "and also" (*cha*) however, is used for the purpose of indicating other periods, but not for the purpose of laying down the restriction, (that partition is to be made only) "after the death of both", for the mother's life does not constitute a bar to the partition of the paternal property, nor the father's life to the partition of the maternal property.

Accordingly, the author of the Sangraha says:—"Partition of paternal property may take place notwithstanding the mother is alive, because in the absence of the husband, the mother has no independent ownership (in the property of her husband); likewise also the partition of the maternal property may be made while the father is alive, for when there are children, a woman's lord is not the lord of her property." The meaning is: Inasmuch as, when there are sons, the mother has not independent ownership in the property of her husband even after his death, therefore even while she is alive the partition of the paternal property is reasonable; and because the husband has no right to the property of the wife, when there are children, therefore, even while he is alive the sons are entitled to divide the maternal property.

Hence also the text, "For they are powerless while those are alive" is to be held as establishing the absence of independence in respect of the property of the father and the mother respectively; and not as establishing the absence of right, since it has been demonstrated that the sons' right to the property of the father (and the mother) accrues by birth.

In the following text,—"Should the father effect partition, he may separate the sons at his own desire, or (may separate) the eldest son with the best share; or all may be equal sharers;"[2]—Yájñavalkya, by declaring that the father may separate the sons at his desire, indicates that while the father is alive, that too

[1] Manu, IX. 104.

[2] Yájñavalkya, II. 114.

is a period of partition when the father feels a desire for it. In that case, again, the father alone is the person who is competent to make partition; since the want of the sons' independence has been established by the text, *viz.*,—"For they have no right while the father is alive and free from defect."[1] From the adjective "free from defect", it appears that what is meant is, that although the father be alive who has defects like degradation, still because the sons are not required to remain under his control, therefore that too is a period of partition when they desire; and in that case the sons are competent to make partition.

There is also another period of partition at the desire of the sons, namely, when the father feels no concern for property and his sexual appetite has been extinguished, and the mother is past child-bearing. Thus Nárada having spoken of partition after (the death of) the father, in the text, namely,—"Hence after (the death of) the father, the sons may divide his estate equally;"[2]—goes on to say:—"Also when the mother is past child-bearing and the sisters have been given in marriage; or when the father's sexual propensity has become extinct and his affection (for property) has ceased."[3]

Jímútaváhana, however, reads the text as "the father is lost or houseless", (instead of "the father's sexual propensity has become extinct";) and explains that "lost" means degraded, and "houseless" signifies, no longer a householder. He also says that the reading, *viz.*,—"the father's sexual propensity has become extinct", is unauthentic. But this is unreasonable, for that reading has been adopted in the Mitákshará and other commentaries. The passage "the sons may divide his estate" (occurring in the preceding text) is to be read with the latter text (of Nárada).

Gautama also, after declaring,—"After (the death of) the father, the sons may divide his wealth,"[4]—goes on to say,—"Also in his lifetime, when he desires, if the mother be past child-bearing."[5]

Also Brihaspati ordains,—"On the death of the parents, partition among brothers has been declared: it may also take place while they are alive if the mother be past child-bearing."[6]

Again, even when the mother is capable of bearing more sons, and the father is unwilling, partition may take place at the desire of the sons, if the father suffer from a lasting disease or be addicted to vice. Thus Sankha says:—"Partition of inheritance may take place against the will of the father, if he be old, diseased, and have his intellect perverted;"[7]—also Nárada says:—"A father who is afflicted

[1] II. Cole. Dig., 196, V.
[2] Nárada, XIII. 2.
[3] *Ibid*, XIII. 3.
[4] Gautama, XVIII. 1.
[5] *Ibid*, XXVIII. 2.
[6] Brihaspati, XXV. 1.
[7] Not found.

with disease, or is influenced by wrath, or whose mind is engrossed with a beloved object, or who acts otherwise than the Sastras permit, is not competent to make partition."[1]

2. To what has been said on the subject in the Mitákshará, namely, that the father's death is one period, when the mother is past child-bearing is the second, and the third is in the lifetime of the father when he desires,—the following objection is raised by Jímútaváhana:—"If the cessation of the mother's courses be joined, as a condition, with the extinction of the father's affections, then since the nubile age is ordained by Manu in the text, *viz.*,—'A man of thirty years shall marry a lovely girl of twelve years; or a man of twenty-four, a girl of eight years: one who marries sooner deviates from virtue;'[2]—and since the same sage ordains the age in which a man should adopt another order, in the text,—'After fifty a man shall retire to a forest;'[3]—therefore at that time, the cessation of the mother's courses being impossible, there could be no partition at the desire of the sons although the father become a hermit or his temporal affections be extinct. If it be said that the extinction of the father's temporal affections without the condition annexed to it, constitutes a period of partition of paternal property, then even when the father is degraded partition could not take place if his temporal affections be not extinct. If it be alleged that this too is another period of partition, then there would be four periods of partition, *viz.*, the death of the father, his degradation, the extinction of his affections and his desire. Hence two periods only are reasonable: one, when the father's right ceases by death, degradation or the extinction of temporal affections; the other, at the pleasure of the father while his right subsists."

This objection has arisen from not understanding the intention of the author of the Mitákshará. For he does not lay down the restrictive rule that there are only three periods of partition; because he does immediately establish other periods by the passage, 'likewise, &c.', and because there is no reason for such a rule. The proposition, again, that one period of partition is on the cessation of the father's right, and the other, at the father's desire although his ownership have not ceased,—is erroneous. Since in that case, the text, "when the mother is past child-bearing", would become unmeaning, for the father's right is not extinguished by reason of the mere fact of the cessation of the mother's courses; and since the cessation of the father's right cannot possibly be the occasion of partition, inasmuch as right has been established to accrue by birth. Similarly, also, right does not cease under the circumstance of being afflicted with a lasting disease; hence also the restrictive rule asserted by you that there are only two periods of partition is difficult to be maintained. Nor can you say that

[1] Nárada, XIII. 16.

[2] Manu, IX. 94.

[3] Manu, IX. 94.

you approve the proposition that right does not cease when the father is afflicted with a lasting disease, for it would be contrary to the text which enjoins partition on that event.

3. As for what has been said by the same author, namely,—"The condition 'when the mother is past child-bearing', refers to the property inherited from the grandfather and other ancestors. Since, the mother being past child-bearing, the birth of more sons becomes impossible, hence partition among sons may then take place, but by the choice of the father, for if ancestral property were divided while the mother was capable of bearing children, then those born subsequently would be deprived of subsistence; nor is that reasonable, for it is ordained,—'Those who are born and those who are not yet begotten, as well as those who are in the womb, all require maintenance; the dissipation of their hereditary source of maintenance is censured.'[1]—Inasmuch as there are two periods for partition of the paternal wealth, therefore, Manu, Gautama and other sages have used the term 'after', leaving the term 'death'. 'After', signifies, extinction of the father's right. But if the above text referred to paternal property, then the text,—'But one born after partition shall take the father's share only,'[2]—would be without any subject to which it may be applicable, because there is no possibility of the birth of more sons, when the mother is past child-bearing; nor can it be at all supposed to relate to the mother's estate, for in that case the mother would be deprived of her property. Hence the condition 'when the mother is past child-bearing', refers to the estate of the grandfather. Nor can the circumstance of the mother being incapable of bearing more children be a cause of partition independently of choice, for there can be no partition without a will to effect it; then the question occurs, whose must that will be? and the solution is that it must be the father's will, as deduced from the text of Gautama, which says,—'After (the death of) the father, the sons may divide the estate, or while he lives if the mother be past child-bearing, and he desire it.' Hence there are only two periods for partition of the grandfather's estate; one is, when the parents are no more, and the other, when the mother is past child-bearing and the father desires it."

This too is but the effect of carelessness; because the objection of dissipation of the subsistence is equally applicable to paternal property; and because the objection that the text, 'But one born after partition, &c.', would be without a subject, holds equally good in case that text be held to refer to the estate of the grandfather and other ancestors; also because it cannot but be admitted, as it is universally admitted, that when a father who retains his temporal affections becomes tainted with degradation and the like, partition of even the grandfather's estate may take place at the desire of the sons. But as it will be established that in the

[1] I. Cole. Dig., 411, XI. [2] Manu, IX. 216.

property of the grandfather, the ownership of the father and the sons is equal by reason of texts such as,—"The ownership of the father and the son is the same, &c.,"—therefore in fact partition thereof at the desire of the sons is not improper. As for a different interpretation of the above text, and the supposition that the absence of mastery relates to his estate, &c., all these will be refuted on the occasion of considering that text.

4. We say that there are only three periods of partition in this way, namely, when the father is alive and worthy of independence, his desire alone is the cause of partition; but if he is not worthy of it by reason of degradation, entrance into the fourth order and the like, then the desire of the sons only; on the death of the father, however, the causality of the son's desire necessarily follows. Otherwise there would be great confusion, for it would be unreasonable to suppose that the circumstances, namely, extinction of desires and the like, do sometimes separately and sometimes conjointly constitute the cause of partition, and because it would be difficult to discriminate between what constitutes the principal cause and what its concomitants. Hence in certain texts the enumeration of some of the circumstances and the omission of the others become consistent.

By reason of the simplicity of the supposition of one radical revelation, all the texts should be considered to indicate only the absence of the father's independence by 'extinction of desire' and the like. To this very effect is the import of texts like the following:—"For they are powerless while the parents are alive:" (Manu). "For sons have not ownership while the father is alive and free from defect:" (Devala). "And it is right even while they are both living:" (Brihaspati).

Hence Vyása and other sages have declared two alternatives, namely, one which is preferable, is the common abode of brothers while the parents are alive; the other, where by their consent and the like, the eldest or any other who is capable of managing the affairs of the family becomes the head of the family, the rest live under his control. Thus Vyása says:—"For brothers, common abode is ordained while the parents are alive."[1] Hárita declares,—"While the father lives, the sons have no independence with regard to receipt, expenditure and deposit of wealth. But if he be deceased, remotely absent, or afflicted with disease, let the eldest manage the estate."[2] Sankha and Likhita, however, most clearly declare,—"If the father becomes incapable, let the eldest manage the affairs of the family, or with his consent a younger brother conversant with business; partition of the wealth does not take place, if the father be not desirous of it; when he is old or his mental faculties are impaired, or his body is afflicted with a lasting disease let the eldest like a father protect the wealth of the rest; as (the

[1] II. Cole. Dig., 284, CXIII.

[2] II. Cole. Dig., 199, VIII.

support of) the family depends upon wealth, they are not independent, while they have their father living, or while the mother is so."[1]

Therefore there are only three periods for partition, in the way mentioned above.

5. In the text of Manu on this subject the term "assembled together" only recites (but does not enjoin) the assemblage (of co-sharers) which may take place, like the plurality (recited by the plural number in the term "brothers",) otherwise partition could not take place, at the desire of one coparcener or where there are two brothers. The term "equally" however is restrictive; but this will be fully considered hereafter.

6. Jímútaváhana says:—"Since the term 'parents' (in Brihaspati's text) bears the dual number, therefore, partition by uterine brothers, of even the paternal property, should be made only on the death of the mother. But the use of the mother's death has no reference to the partition of the mother's estate; because the text 'even while they are living' cannot consistently refer to the mother's estate, therefore, it must be admitted to refer to another's property: hence, because by the term 'even' in the text 'even while they are both living', the existence of the parents is declared to relate to the very same case to which the non-existence of the parents stands as the cause, therefore the death of the mother ought not to be interpreted as referring to the estate of the mother."

But this is not consistent; for in the text of Manu the terms 'father' and 'mother' are separately set out: also where it is otherwise, (as in Brihaspati's text) it is reasonable to interpret the dual number as only intending reference to partition. If it were not so, then there would be no earthly reason for connecting the property of one with the death of another.

What again is the meaning of the passage, namely,—"Because the text, 'even while they are both living, &c.', cannot consistently refer to the mother, &c.?" If it be that the text does not refer to the property of the mother, by reason of the absence of her independence while the father is alive, in that case the father has ownership even in the property of his wife notwithstanding the sons, therefore her death too cannot have any bearing upon that, hence would arise the objection of having reference to something else.

And as for a different meaning of the above passage, it will be shown that that is an absurd assertion. Hence the proposition, affirmed by the author of the Sangraha and others,—*viz.*, that the mother's death relates to her property,—is consistent; since the reason is secular.

7. The common abode of the brothers, however, is preferable, as while the parents are alive as likewise after their death. Thus

[1] II, Cole Dig., 203, XVII,

Sankha and Likhita declare,—"They may live together if they please, for being united together they may attain to prosperity."[1] The meaning is, that being "united together", *i.e.*, dwelling together, they may attain to prosperity through the assistance rendered by each other in the acquisition of property. So Nárada says,—"Let the eldest brother, like a father, maintain the rest together; or let a younger brother who is capable, do so: the maintenance of the family depends upon ability."[2]

So Manu ordains,—"The eldest brother may take the patrimony entire, and the rest may live under him as under a father. By the eldest son as soon as born, a man becomes father of male issue, and is exonerated from the debt to the ancestors: such a son therefore is entitled to take the entire heritage. That son alone on whom he devolves his debt and through whom he tastes immortality, was begotten from a sense of duty; the rest are considered as begotten from love of pleasure. Let the eldest like a father support the younger brothers, and let them according to law behave like sons towards the eldest brother. The firstborn exalts the family, or, on the contrary, destroys it; the firstborn is the most respectable in society, the firstborn is honored by the good in this world. If the eldest brother acts as an eldest brother should do, he is as a mother, he is as a father. But one who does not act as an eldest brother should do, is still to be respected as a relative. The eldest brother who from avarice defrauds his young brothers shall not be considered as the eldest, shall forfeit his share and shall be punished by the king."[3]

Agreeably to all these texts, the joint abode of all the brothers in obedience to the eldest brother who is possessed of good qualities, is preferable.

But if increase of religious merit be desired then partition should be made. It has been so declared by Manu and Prajápati;—"Thus let them dwell together, or apart for the sake of religious merit, since religious duties are multiplied apart, therefore separation is virtuous."[4] Religious duties consist in the worship of gods, &c., for that alone is never heard to be separate in a joint family. Accordingly, Brihaspati says:—"Among those who live in commensality, the worship of the manes of ancestors and of gods and Bráhmins, is common: but among the separated the very same worship takes place in the house of each."

The author of the Sangraha, however, says that the term 'increase of religious merit', includes also the increase of religious merit by means of the establishment of the sacred fires and the like ceremonies:—thus he says,—By partition the paternal estate is rendered the property of the sons; when the right of property

[1] II. Cole. Dig., 204, XIX.
[2] Nárada, XIII. 5.
[3] Manu, IX. 105—110 and 213.
[4] *Ibid*, IX. 111.

arises, they commence; hence separation is virtuous: "commence", *i.e.*, accomplish the ceremonies of establishing the sacred fires and the like.

But this has already been refuted by us when establishing the right of sons to the performance of ceremonies enjoined by the Sruti and the Smriti, even before partition by reason of the sons' right to the paternal property accruing by birth alone. Therefore by the term 'religious duties', are to be understood only such religious duties as the five great sacrifices.

8. The phrase "and the sisters given in marriage", is however inserted not for the purpose of making a period of partition, but for the purpose of shewing that their marriage must be celebrated: similarly the text of Nárada, *viz.*,—"Whatever remains after the father's gifts are given and the paternal debt liquidated out of it, should be divided by the brothers so that the father may not remain a debtor,"[1]—ordains the obligation of paying off the father's debts, but not a period of partition.

9. Again when the father separates the sons at his desire, then also arbitrary will shall not be exercised, but the meaning of Yogísvara's text is, that of the two methods, *viz.*, "Or (may separate) the eldest with the best share, or all may be equal sharers,"—that method which he chooses may be adopted.

The venerable Vijñánesvara explains the above text in the following way:—"The eldest, with the best share; the middlemost, with the middlemost share; the youngest, with the smallest share; or all eldest and the rest may be made equal sharers."

The Easterns, however, say that the phrase 'at his desire' indicates a separate method altogether, and distinct shares of the eldest and others and equal shares constitute two methods: thus there are three methods; accordingly the first term "or" in the text "or (may separate) the eldest",—becomes significant, as having reference to the mode indicated by the phrase "at his desire": it would become far-fetched, had it reference to the method which is subsequently set forth.

And they assign the following reason for that view:—In the the text of Nárada, *viz.*,—"Or the father himself when old may separate the sons, either (he may separate) the eldest with the best share, or in any way he pleases,"[2]—because one mode of unequal distribution is set forth by the passage "either the eldest, &c.", and then it is said "or in any way, &c.", therefore it is indicated that there is also another mode of distribution by the desire of the father. Also Hárita says:—"A father, having during his lifetime distributed his property may retire to the forest, or enter into the order suitable to an aged man; or he may remain at home having distributed a small portion (of his property amongst his sons) and

[1] Nárada, XIII. 32. [2] Nárada, XIII. 4.

retaining a greater portion; should he be pinched, he may take back from them."[1]—"The order suitable to an aged man," means the fourth order; "be pinched", means, be reduced to poverty:—here too a different mode is expresed by the passage "having distributed a small portion". Therefore, by reason of the same foundation (of Yogísvara's text) with these (texts) it is reasonable to say, in order to include the above mode of partition in Yogísvara's text, that the passage "at his desire" (in Yogísvara's text) indicates nothing but a separate mode.

This is wrong: for the term "or" does not become far-fetched (by having reference to the subsequent mode,) since it may, with propriety, be construed in either way. Neither is the reason assigned correct. Because if the object of the phrase 'at his desire' (in Yogísvara's text) be to include another mode mentioned in other texts, then the latter half (Yogísvara's text) would be merely unnecessary; for as those two modes also are mentioned in other texts, these may likewise be included under the phrase "at his desire": there would certainly be very little necessity if the object of that phrase were to include a mode other than these (two modes). And because desire being under no restraint, the meaning of that (other supposed mode) cannot be ascertained without consulting other texts, (but it must be ascertained) so that arbitrariness may be prevented: but there would be no necessity for consulting other texts, if the phrase "at his desire" be interpreted to be inserted for the purpose of removing the idea of any rule regarding the applicability of the two modes mentioned by (Yogísvara) himself. Nor can it be said that inasmuch as option is indicated by the very assertion of the alternative, the phrase "at his desire" is useless; since it is far more reasonable to say that the phrase though it is superfluous, is intended to have reference to the two modes mentioned by himself, with the object of removing the idea of the alternative being governed by any rule, rather than that the latter half (of Yogísvara's text) is useless.

Again, the same foundation (of Yogísvara's text) with the texts of Nárada and other sages, is not inconsistent with the interpretation put by Vijñánesvara; for the two modes mentioned in Yogísvara's text, are declared in other texts also. Nor can it be said that let the meaning of Yogisvara's text be, that arbitrary will alone constitutes a distinct mode; for in that case the following text would be meaningless, *viz.*: "A father who acts otherwise than the Sastras permit has no power in distribution;" for, if (the exercise of unqualified will were agreeable to the Sastras, then acting otherwise than the Sastras permit, would be impossible. Had will been the only cause, then the following text of Kátyáyana also would be useless, *viz.*:—"But let not the father distinguish one son at a partition made in his lifetime, nor whimsically deprive any one (of his share) without sufficient cause."[2]—"Let not

[1] II. Cole. Dig., 205, XXIII.

[2] II. Cole. Dig. 207, XXVII.

distinguish", means, let him not make any son benefitted by any arbitrary special consideration, otherwise than by the specific deductions for the eldest and others,—as enjoined by the Sastras; "sufficient cause" again, is such as degradation, &c., recognised by the Sastras; "whimsically" means, through anger or through affection towards the son of a beloved wife; "deprive" signifies, render destitute of shares.

As for the following text of Yogísvara, namely,—"Among those separated with greater or less allotments, (the distribution) made by the father is pronounced lawful,"[1]—that again has, consistently with the text, *viz.*,—"A father who is afflicted with disease or incensed with wrath, &c.,"[2]—been explained by Vijñánesvara himself to mean only this:—"lawful", *i.e.*, if in accordance with law, then what is made by the father is pronounced as finally made, *i.e.*, cannot be revoked; but what is not lawful, *i.e.*, not made agreeably to the Sastras, can certainly be revoked.

Similarly, are to be explained also the following texts of Brihaspati and Nárada (respectively):—"Shares which have been assigned by the father to the sons, whether equal, greater or less, ought to be kept unaltered by them: else they shall be chastised."[3]—"For such as have been separated by their father with equal, greater or less allotments of wealth, the same is a lawful distribution; for the father is the lord of all."[4]—The meaning is, that even in case of partition with the best and the like shares allotted by the father to the eldest and the like respectively, the others should not be dissatisfied; nor should the eldest and others be so, in case of partition with equal allotments: accordingly Nárada says, that "that is a lawful distribution".

Partition with the best and the like shares has been declared also by Manu thus,—"The twentieth part of the estate together with the best of all chattels, constitutes the specific deduction for the eldest; half of that for the middlemost; and a quarter, for the youngest."[5] Baudháyana has declared the case of equal shares, thus:—"Manu distributed the heritage among his sons; hence the share of all is equal by reason of the absence of distinction."[6] The meaning is, that all the sons shall have equal shares inasmuch as no distinction is mentioned in the Sruti, *viz.*, "Manu distributed the heritage among his sons."

10. If a father, by his own will, separates his sons with equal shares, then he must give to each of his wives a share equal to that of a son. Thus Yájñavalkya says:—"If he makes the allotments equal, then his wives to whom *woman's property* has not been given by the husband or father-in-law, shall be made equal sharers."[7]—

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[1] Yájñavalkya, II. 116.
[2] Nárada, XIII. 16.
[3] Brihaspati, XXV. 4.
[4] Nárada, XIII. 15.
[5] Manu, IX. 112.
[6] Baudháyana, I. 2, 3, 2 and 3.
[7] Yájñavalkya, II. 115.

To whom *woman's property* has not been given through affection, &c., by the husband or father-in-law: the mention of the husband, &c., is illustrative; the meaning is, who are devoid of *woman's property* described hereafter. What is laid down is, that each of such wives is entitled only to a share equal to that of a son. Thus the following meaning is deduced:—When the father separates his sons even with the best and the like shares, then also after having deducted the best and the like shares he shall, out of the whole property from which the specific deductions have been made, allot to each of his wives a share equal to that of a son; but they are not entitled to specific deductions for their seniority.

Whatever, however, a wife is entitled to as her specific deduction, that too the wife gets; accordingly Ápastamba says:—"The furniture in the house and the jewels belong to the wife."[1]—"Furniture" means pots for eating and the like. What furniture of a woman is not joint property and what ornament is not so, will be considered hereafter.

Nor is it reasonable to say that when Vijñánesvara explains the above text (of Yogísvara) to intend that a wife is entitled to a share equal to that of a son in both the modes (of partition), then the condition consisting in the equality of shares, as ordained in the passage, "If he makes the allotments equal",—is useless: this much only ought to have been said that the wives do not get specific deductions according to their seniority. Because a mode of mere unequal distribution without the specific deductions,—has been declared by Manu in the text,—"When the specific deductions have thus been made, let equal shares (of the residue) be allotted: but if the specific deductions be not made, then the distribution of shares among the sons shall be in this manner,—let the eldest have a double share; the next born, a share and a half, and the younger sons each a share: this is the settled law,"[2]—by Gautama in the text,—"Or the first-born may have double share, and the rest one share each,"[3]—by Vasishṭha, in the text,—"The partition of heritage among brothers is now declared: let the eldest take two shares, to him also belongs a tenth of the oxen and horses; the goats, the sheep and the house belong to the youngest; the iron instruments and the furniture of the house belong to the middlemost,"[4]—and by Nárada, in the text,—"To the eldest an additional share should be given; for the youngest the best share is ordained; the rest shall partake of equal shares and so the unmarried sister."[5]—If this mode be adopted, then in order to establish the absence of the wives' shares in that case, the restrictive rule, namely, "If he makes the allotments equal,"—has been ordained. Hence there is no defect.

Accordingly, in interpreting the following text of Manu, *viz.*:—"Among undivided brothers, if there be exertion in common, then

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[1] Ápastamba, II. 6, 14, 9.
[2] Manu, IX. 116 and 117.
[3] Gautama, XXVIII. 9 and 10.
[4] Vasishṭha, XI. 40, 42—45.
[5] Nárada, XIII. 13.

the father shall on no account make unequal allotments,"[1]—which prohibits the distribution of unequal shares, if in acquiring the property there has been "in common", *i.e.*, equal "exertion", *i.e.*, labour of all the brothers,—Jimútaváhana says:—But the specific deductions may certainly be given by the father, these do not partake of the nature of allotments; unequal allotments only being prohibited.

The following is the opinion of Vijñánayogi:—Hence also in a case of partition with specific deductions, as declared by Yájñavalkya in the text, "or the eldest with the best share",—the sons certainly take equal shares; consequently to that case also, the above text (of Yájñavalkya) is applicable. But it does not apply to the case of partition with double shares, &c.

But if *woman's property* has been given (to a wife,) in that case the allotment of a half share is subsequently ordained in the text,—"If any have been assigned, let him allot the half."[2] Although this has been ordained with reference to what the husband is to give to a wife who is superseded by the marriage of another wife, still by parity of reasoning it is to be applied to the present case where the question occurs (as to what should be allotted to a wife who has received *woman's property*). For Baudháyana says:—"What is affirmed of even one among many that have a common property, the same is to be extended to all, since they are declared to be similar."[3]

Jímútaváhana and his follower, the author of the Dáyatattva, appear to explain the term "exertion in common" in the text of Manu, *viz.*,—"Among undivided brothers, &c.,"—to mean, if all ask for partition; for they say:—"But when the sons request partition in the father's lifetime, an unequal distribution should not be made by him." But this interpretation is improper inasmuch as the term "in common" (*saha*) becomes unmeaning, and the term "exertion" (*utthánam*) although importing labor must be taken to signify desire for partition; hence the interpretation put by us is to be preferred: thus we get also harmony with the following text of Yogísvara, *viz.*,—"When there is an augmentation of the common stock, then, however, the distribution is ordained to be equal:"[4] hence that text is reasonably construed by putting no other interpretation than what is approved by us.

It has been said in the Mitákshará:—"Again, in the text,—'If any have been assigned, let him allot the half,'—the term 'half' does not signify an exact equal division; hence so much should be given as what was given before and what is given now may be equal (to the share of a son)." The purport of which is this:—although the term *ardha* (half), in the neuter gender, signifies equal division

[1] Manu, IX. 215.
[2] Yájñavalkya, II. 148.
[3] Not found.
[4] Yajñavalkya, II. 120.

according to the *kosa* (vocabulary) which says,—"*ardha* in the neuter gender, implies equal division",—still the intention is that a wife is entitled only to a share equal to that of a son, so that the share of a wife may not be unsettled, that is, sometimes greater than that of a son, and sometimes less; also that the restriction as to an exact half share may not have a spiritnal object.

With regard to this the author of the Madanaratna says:—"From the plural number in the term 'wives', (in Yájñavalkya's text) it appears that the father himself is to take a share for each wife; but separate shares are not to be allotted to them; since that would be contrary to Hárita's text which ordains,—'There can be no partition between husband and wife.'"[1]

This is not tenable; for partition between husband and wife is not affirmed here, so that there would be conflict with the text of Hárita, but (what is affirmed is) the gift to the wives, at the time of separating the sons, of shares equal to theirs, like the gift through affection; for this reason it has been said that a half share shall be assigned if *woman's property* has been given. Hence there is no defect.

11. The partition, however, which takes place at the desire of the sons during the lifetime of the father,—must be equal; because there is no provision for inequality (of distribution,) and because the term "equally" which occurs in the previous text is to be construed with the text of Manu (Nárada?) *viz.*,—"When the mother is past child-bearing."

So also the partition after the death of the father must be equal; for it is so declared by the term "equally" in Manu's text cited before; also Hárita says, "When the father is dead, the division of the heritage shall be equal;"[2]—so Paithínisi declares,—"When the paternal property is to be divided, the shares of the brothers shall be equal;"[3] so also Yájñavalkya ordains,—"After the death of the parents, the sons shall equally divide the heritage and the debts."[4]

This text (of Yájñavalkya) has been explained in the Mitákshará, thus:—"After the death of the parents," indicates the period of partition, "the sons" shows the persons by whom partition is to be made, "equally" restricts the mode of partition.

If it be said that when Manu, after having premised partition after the death of the father, and having ordained the alternative of joint abode to be preferable, in the following text,—"The eldest alone, however, may take the paternal estate in its entirety, and the rest may live under him as under a father,"[5]—has also spoken of unequal division in the text,—"The specific deduction for the eldest

[1] Found in Ápastamba, II. 6, 14, 16.
[2] Not found.
[3] Not found.
[4] Yájñavalkya, II. 117.
[5] Manu, IX. 105.

is the twentieth part, &c.:"—then how can the restriction be obtained that the distribution shall be equal? The answer is, although this unequal distribution is laid down by the Sastras, whether the father be alive or dead, still the restriction,—that the distribution shall be put equal in this *kaliyugam* is to be maintained in pursuance of other texts; Yogísvara ordains,—"But practise not what is abhorred in the world though it be legal, for it secures not spiritual good."[1]

Here the term "world" means *yugam* (age); the meaning is, "what is abhorred", *i.e.*, prohibited to be practised in one age, although it may be legal in another age, ought not to be practised. Otherwise there would be the following defects:—it would be contradictory to say that the same thing is legal, and (at the same time) is one which secures not spiritual good; the abhorrence of what is agreeable to the Sastras by one who is versed in them would be contradictory; the abhorrence of mortals in ignorance of the Sastras does not, however, render anything incapable of affording spiritual good, because the same might extend to cruelty, &c., in the ceremonies of *agni homa* and the like. Accordingly, those only that are ordained to be shunned in the *kaliyugam*, such as the killing of cattle in honor of a venerable guest and the sacrifice of cows, have been set forth in the Mitákshará as examples of what are abhorred in the world.

Again, wherever the re-marriage of an undefiled widow, and the like, have been mentioned under what are to be shunned in the *kaliyuga*, there have been also included the specific deductions for the eldest, &c.; thus in the Adipurána it has been said,—"The remarriage of a woman once married, the deduction for the eldest, the sacrifice of kine likewise, the intercourse with a brother's wife, and the use of a *kamandalu*; these five shall not be done in the *kaliyuga*." So also it has been said in the Smritisangraha,—"As neither the law of appointment to raise issue, nor the sacrifice of kine, so neither the partition with specific deductions, now exists."—"The law of appointment to raise issue", means, intercourse,—in the prescribed way, by appointment of venerable relations,—with a brother's affianced bride if the brother dies, (before the completion of marriage); "the sacrifice of kine", is as ordained in the text,—"Sacrifice a barren cow as a victim consecrated to Mitra and Varuna;"[2] "now," means, in the *kaliyuga*.

Accordingly, Ápastamba, having declared his own opinion,—"A father, in his lifetime, shall equally distribute heritage among the sons;"[3]—and having stated as the opinion of some, the taking of the entire estate by the eldest, in the text,—"Some (say that) the eldest is the heir;"[4]—and having shewn, as the opinion of others, a distribution with specific deductions, in the text,—"In some countries, the gold, the kine, and the black produce of the earth belong

[1] Not found.
[2] Not found.
[3] Ápastamba, II. 6, 14, 1.
[4] *Ibid*, II. 6, 14, 6.

to the eldest; the car appertains to the father; and the furniture in the house and ornaments are the wife's as also wealth (received by her) from kinsmen;"[1]—has refuted the same in the text,—"That is contrary to the Sastras;"—and has himself explained the inconsistency with the Sastras, in the text,—"No distinction is mentioned in the Sruti,—'Manu distributed his heritage among his sons.'"[2]

Hence unequal distribution, though ordained by the Sastras, ought not to be practised in the *kali* age.

As for what has been said by the author of the Mitákshará, namely,—"it is also contrary to scripture":—that is open to question. For if there be inconsistency with scripture, then unequal distribution could not be practised in other ages also (besides the *kali* age,) consequently the texts ordaining it would be altogether without authority; hence it is inconsistent to say that it is one which is to be shunned in the *kali* age. Neither is here direct conflict with scripture; for inasmuch as distinction is not ordained in the Sruti (cited above), therefore equality (of distribution) is inferred according to the maxim,—"Eqality is the rule where no distinction is expressed."

In the following passage of the Smritichandriká, however, there is written a different text of scripture, cited by Baudháyana, which ordains unequal distribution:—He himself has declared that there is a different text of scripture, bearing upon the specific deductions for seniority, "The eldest shall set apart one from every kine of property agreeably to the Sruti,—Therefore set the eldest son at ease with a property;" by speaking of "one from every kind of property", he indicates that the singular number in the term 'a property', occurring in the Sruti, is significant; 'set at ease', means satisfy.

Jímútaváhana and others, however, say that the equal or unequal distribution is determined respectively with reference to the consent or want of it (of the younger brothers,) in the passage:—"When there is the consent of the brothers by reason of great respect, &c., (for the eldest) then there may be unequal distribution with specific deductions and the like: accordingly equal division alone is observed in the world, because persons of the present day (who are younger brothers) entertain no great respect (for their elders), also because elder brothers deserving of deductions are now rare." This is, however, not acceptable as it is inconsistent with the first half (of Yájñavalkya's text,) because in that case, the sons' desire alone would be the cause; and the interpretation,—that the father's will constitutes another independent mode (of partition)—has, however, been previously shewn to be erroneous.

12. When the father distributes his self-acquired property amongst the sons, he shall himself take two shares. This has been

[1] Ápastamba, II. 6, 14, 7, 8 and 9. [2] Ápastamba, II. 6, 14, 11.

declared by Nárada,—"The father while dividing his own property shall take two shares."[1] Also Brihaspati says,—"If partition takes place in his lifetime, the father shall take two shares."[2]

It is said by Sankha and Likhita that the father takes two shares in case he has an only son; thus,—"If he be the father of an only son, he shall allot two shares to himself."[3] The author of the Vyavahárapárijáta, however, has explained the above text, thus; —Here the term "only" (*eka*) means, excellent; accordingly, if the son, being accomplished, is capable of acquiring wealth, then on separation with him, two shares shall be taken by the father.

Jímútaváhana, however, has explained the above text, thus;—"The term *ekaputra* (rendered above into 'the father of an only son') signifies, the son of one father, *i.e.*, the true (*aurasa*) son; it is not a compound called *bahuvríhi*, signifying, 'the father of an only son'; for, as in a *bahuvríhi* compound what is principally considered is an object different from what the constituent words of such a compound mean, it is not preferable to a *shashthitatpurusha*; accordingly, the *wife's son* (*kshetraja*) is excluded by reason of his being the son of two fathers: hence a father being true son (of his own father) shall take two shares out of the estate of his own father, but not a father who is (*kshetraja*) or the *wife's son*."

This is wrong, for in that case this text would refer to the estate of grandfather; but it will be established that even a father who is a true son (of his father) is entitled to (no more than) a share equal to that of a son, because the father and the sons have equal right to the estate of the grandfather: accordingly here the *bahuvríhi* compound is to be necessarily preferred.

The author of the Mitákshará, however, has not noticed the above text at all.

Kátyáyana says,—"A father takes either a double share or a moiety by reason of his acquisition of both son and wealth; and a mother also, if the father be deceased, is entitled to a share equal to that of a son."[4]

(In commenting) on this text Jímutaváhána says:—"The term *putravittárjanát* (rendered above into 'by reason of his aquisition of both son and wealth') means, from a son's acquisition of wealth, *i.e.*, the father is entitled to two shares of the wealth acquired even by a son, in the same manner as of his self-acquired property: but it does not signify, 'by reason of the acquisition of both son and wealth'; for it is admitted that when partition is made with brothers, then even one who has not got a son takes two shares as the gainer of the wealth; hence it must be affirmed (by the adversary to be the meaning of the above text) that if any relative exist who is entitled to participate, the acquirer takes two shares, &c.; but if there be none, he takes the whole. But thus the specific

[1] Nárada, XIII. 12.
[2] Brihaspati, XXV. 5.
[3] II. Cole. Dig., 216, XLIV.
[4] *Ibid*, 269, CIII.

mention of father and son would be unmeaning, like the song of a drunkard. Besides, acquisition is an act causing right of property, for it has been declared that 'it is a contradiction to say that acquisition does not produce right of property'; but it has been shewn under the topic of the gift of whatever a man owns that there can be no such right over sons; hence the term 'acquisition' would be metaphorical in regard to sons and literal in respect of wealth; but this twofold meaning of a term once uttered is unreasonable. Nor can it be argued that the text would be superfluous, since the son's right to a double share is obtained from the fact of his being the acquirer, and since the father's right to two shares is also deducible from other texts, independently of the above text. For this text is not superfluous; since without this text there is no authority for holding that the father is entitled to two shares of his son's wealth."

This is not tenable; for the compound (*putravittárjanát,*) as explained by you, conveys a secondary meaning, and as such is less reasonable than the conjunctive form (maintained by us). As for the objection raised to the conjunctive form by the argument "for it is admitted, &c."; that is extremely incongruous: for the text does not relate to participation, &c., by brothers, the father's property being the subject dealt with. Nor can it be contended that the term *putra* "son" (in the above text) is useless, the acquisition of property alone being a sufficient cause for taking two shares. Because the term shews the absence of independence (in the son): the purport is, a son too being acquired by him like property is dependent, and as such can be no obstacle to the taking by the father,of two shares of his self-acquired property. As for the objection, "but this twofold meaning, &c.", that too is not good. For the father's right over the sons too is admitted. It cannot be said that this would be contradictory to what is said under the topic of the gift of whatever a man owns, the purport of what is said there being against such right of the father and others. Because the absence of the gift of sons, &c., which is concluded in that topic, has been established by reason of conflict (of the gift of sons, &c., with what is shewn in the Bháshya, to be the inducement (for giving away all that a man owns). It is for this reason that the provisions regarding the gift, &c., of sons and daughters, bear only the primary meaning, they do not convey gift, &c., that are secondary, such as making sons, &c., dependents of others.

13. But the appropriation of two shares by a father relates to his self-acquired property; it has no reference to the property acquired by his father and the sons are entitled to equal shares of the grandfather's estate, since their co-equal ownership therein has been ordained by Yájñavalkya in the following text,—"The ownership of father and son is, indeed, similar in the acquisitions of the grandfather, whether land, any settled income or moveables."[1]

[1] Yájñavalkya, II. 121.

And the meaning of this text is this:—"land", signifies, rice-field and the like; "any settled income", is what is given by reason of written grants by kings to the following effect,—"To such and such a person, so many betel-leaves or the like shall be given from such and such a plantation of betel-leaves or orchard of betel-nuts"; "moveables" are gold, &c.; by the term "indeed", it is indicated that the ownership of father and son in these is well-known, right accruing by birth alone; that again is "similar", *i.e.*, co-equal: hence in respect of the grandfather's estate, the sons are not dependent on the father, as they are in respect of the father's self-acquired property; consequently partition (of the grandfather's estate) may be made (by the sons) even against the father's will, and the rule regarding the father's two shares does not obtain.

So Brihaspati has declared,—"In the property acquired by the grandfather, whether immoveable or moveable, the parcenership of both father and son is ordained to be equal indeed."[1]

The author of the Madanaratna says:—The meaning is that the father shall take an equal share only, but not a double share as in the case of his self-acquired property, nor shall adopt the mode of unequal distribution.

On this, Jímútavâhana says: "Where of two brothers, one dies, while the father is alive, leaving a son and the other brother survives and subsequently the father dies: in that case the son alone, by reason of his proximity, would have inherited the father's estate, but not the grandson whose father is previously deceased, by reason of his distance; in order to prevent this, it has been declared that 'the ownership is similar'; hence, as the father had ownership in the grandfather's estate, so his son too has: there is, however, no distinction by reason of greater or less propinquity, both being equally competent to offer oblations in the *párvana* mode. This is the purport. Hence also a great-grandson, whose father and grandfather are dead, is equally entitled to the estate of the great-grandfather, for there is no distinction as to the offering of oblations. But if the sons had ownership in the grandfathers' property while the father is alive, then on partition by two brothers having sons, their sons too would have been entitled to shares by reason of their equal ownership. Hence the text of (Yájñavalkya) relates to a grandson whose father is dead and not to grandsons generally. Nor can it be said that such cannot be the purport of the text, as being not the subject premised. Because the case of grandsons by different fathers is the subject previously proposed. But what is intended to be shewn by the declaration of the similarity of ownership, is that there cannot be unequal distribution by the father at his will, as it can be in the case of self-acquired property. Thus Vishṇu says:—'When a father separates his sons from himself, his will regulates the division of the wealth acquired

[1] Brihaspati, XXV. 3.

by himself; but in the estate inherited from the grandfather, the ownership of father and son is co-equal.'[1] Hence as regards self-acquired property, a father may separate his sons with unequal allotments; but in the grandfathers' estate the ownership being co-equal, the father cannot act according to his pleasure. These texts being reasonably construed by this interpretation alone, the general rule,—that the father's desire constitutes the period of partition, and that the father is entitled to a double share,—is not affected (by them). Again, although it may be conceded as is maintained by Dhâresvara, that the texts relate even to grandsons whose father is alive, still the object is no other than to prevent unequal distribution by the choice of the father; they do not however shew that partition may take place at the desire of the sons, nor that the father is not entitled to two shares. When, agreeably to the following text of Brihaspati, *viz.*,—'The eldest by birth, by science, and by good qualities shall obtain a double share of the heritage; and the rest shall share alike: for he is as a father to them,'[2]—a father, who delivers his father from the lower regions and is the eldest by good qualities,—is, on partition with his brothers, entitled to a double share as being like a father: then it is not proper on the part of yourself and the sages, to say that the father himself, on partition with his sons, does not obtain a double share of the estate inherited from the grandfather, although it is through him alone that the relation of the sons to the grandfather's property arises. Hence the rule that the father's desire constitutes the period for partition, as set forth in the text, 'He may separate his sons by his choice' and that the father is entitled to a double share, as is laid down in the text,—'shall take two shares',—is applicable also to the property inherited from the grandfather; but it is only the unequal distribution amongst the sons, that does not take place at his will. Nor can it be said that in the following text, *viz.*,—'In the property acquired by the grandfather, whether immoveable or moveable, the parcenership of both father and son is ordained to be equal indeed.'[3]—the equality of the shares of father and son being clearly declared by Brihaspati, how are two shares for the father obtained in this case too? Because the meaning is that 'the parcenership, *i.e.*, the act of one who distributes is equal', that is to say, the father is not, however, entitled to make a distribution of greater and less shares at his choice: it does not imply that the shares must be alike. Or the declaration of equal parcenership may be taken to have reference to a father who is the son of two fathers, such as the *wife's son*, since it has been shown that the term *ekaputra* in the text,—'If he be the father of an only son, &c.,—refers to one who is a true son.'

This is not acceptable, being opposed to the context. Since after ordaining that among grandsons by different fathers the

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[1] Vishṇu, XVII. 1 and 2. [2] Brihaspati, XXV. 9.
[3] Brihaspati, XXV. 3.

allotment of shares is according to the fathers,—it is declared,—"The ownership of father and son is, indeed, similar in the acquisitions of the grandfather whether land, any settled income, or moveables."—Now here three doubts arise, namely, whether when the father is alive, the grandsons have no ownership in the grandfather's property, or there can be no partition or partition can take place only by the choice of the father as in the case of his self-acquired property. Hence what the author of the Mitákshará says, namely, that the latter text is ordained only with a view to remove these doubts,—is consistent with the proper mode of interpretation. Wherefore should it be restricted to the case of grandsons whose father is dead? Nor can it agreeably to what is maintained by Dháresvara, be said, that the text is intended to prevent only unequal distribution by the choice of the father, and not the determination of the time for partition by the father's choice, nor his double share, which are without distinction applicable to this case. Because there is no ground of discrimination (as to what is the intention).—Moreover, the causality of the father's desire, is literal, being expressed by the instrumental case in the text, "may separate *by his choice*"; but the determination, by the father's desire, of the time for partition, is only inferential: it is very strange that when the literal causality is prevented by this text, it does not prevent the determination (by the father's choice) of the time for partition—which is inferential. And if the ownership be admitted to be co-equal, as you have taken upon yourself the difficulty of admitting it,—then the causality of the son's desire, and the determination by it, of the time, cannot be opposed.

If it be said,—that the father is entitled to a double share by reason of his being the father and not by reason of his greater right, nor by reason of his being the acquirer; for (otherwise) that (*i.e.*, the acquirer's double share) being established by the general text of Vasishtha, namely,—"Whatever any one of them has himself acquired, he is certainly entitled to two shares" (of the same.)—the particular text,—*viz.*—"The father.....shall himself take two shares,"—would be useless; therefore in the same way as, by virtue of special texts, he is, by reason of his being eldest son, entitled to two shares of the property acquired by his father, so likewise is the father, of the property inherited from the grandfather: hence in our opinion the father is entitled to a double share even of the property acquired by a son.

(The answer is,) true, but the text which ordains co-equality of right, and which is applicable without restriction, is against that (conclusion).

That the father is not entitled to a double share of the property acquired by a son, has been already established by impugning the meaning assigned by you, to the text cited by you, namely, *putravittárjanát*. Nor can it be said, that even if a double share cannot be deduced from that text, still the father's double share in the

property acquired by a son, follows from the general text itself. For (in that case), the specification of the acquisition of the property as the reason thereof, would become meaningless. Nor can it be argued that that part of the text which specifies the reason, is merely illustrative, otherwise there would be no use of this special text inasmuch as a double share by reason of acquisition is established by the very text of Vasishṭha. Since, as the double share of the son, by reason of his being the acquirer, is not prohibited in that text, therefore although the father be entitled to two shares by reason of his being the father, still the result would be the equality of shares; but the father's share does not become greater than the son's share, as you contend, for there is no express text to that effect.

As for the impropriety mentioned in the passage, "Moreover, &c."; that is nothing. For there can be no question of propriety as to the equality ordained by a text of law: neither can impropriety be avoided by you, (for you say) the eldest is entitled to two shares by reason of his being the eldest, and the father is not entitled by reason of his being the father, hence follows the equality (of the father) with the eldest son.

14. It appears, however, from the following text of Kátyáyana, cited in the Madanaratna, that the participation of equal shares by all the brothers, and by the father and sons, is the preferable mode:—"When the parents and the brothers take in equal shares all sorts of properties, such a partition is declared to be lawful."[1]—Accordingly, Yogísvara has employed the term "all" in the text, "or all may be equal sharers", otherwise he would have said "or shall make the sons equal sharers".

15. But with reference to a coparcener who is capable of maintaining himself by his own exertion and does not wish to take a share of the paternal property, &c., it is said by Manu:—"If any one of the brothers having a competence by his own exertion, feels no desire for the heritage, he may be separated by giving him something."[2] So Yájñavalkya says:—"The separation of one who is able to support himself and is not desirous (of taking his share) is to be effected by giving him something."[3]—"May be separated", signifies, may be made to have no concern (with the property); the same is the meaning of the term "separation" (in Yájñavalkya's text); "by giving him something", means, by giving him anything, even a trifle, as a sign of partition: and this is to be done for the purpose of preventing his sons from claiming the inheritance.

Haláyudha, however, has in order to make the above text of Manu correspond with the following text of Nárada, *viz.*,—"He who being employed in the management of the affairs of the family, performs its business, is to be honored by the brothers with food,

[1] Not found in Cole. Dig. [2] Manu, IX. 207.
[3] Yájñavalkya, II. 116.

raiment and conveyance,"[1]—assumed the reading *sa nirvátyah* and has explained the meaning to be,—his share is to be made up by the brothers who have taken their shares, by deducting wealth from the share of each. But this is to be rejected; because the term "feels no desire" would become meaningless, and because it is improper to assume a reading which is not noticed by the commentators such as Medhátithi; and because the other reading is consistent with the clear declaration (in Yájñavalkya's text) of separation.

The author of the Prakása, however, has, even adopting the correct reading (*nirvásyah*), explained the text of Manu in the following way:—"If any one of the co-sharers who are engaged in the acquisition of wealth, do not, through negligence or laziness, 'feel desire', *i.e.*, co-operate, *i.e.*, render any assistance, although 'having competency', *i.e.*, capable of rendering assistance 'by his own exertion', *i.e*, by his co-operation, he should be debarred from his share, *i.e.*, from the wealth acquired by the others' own exertion, 'by giving him something in lieu of maintenance', *i.e.*, by allowing him to participate in the capital alone." This is not reasonable; because the term "although" (*api*) is to be imported, and because the meaning which is consistent with the text of Yogísvara, does most clearly appear, and because the interpretation put by you depends upon a different text.

16. Kátyáyana says:—"When one himself dies unseparated, his son who has not received maintenance from the grandfather, shall be made participator of the heritage; he is to get, however, the paternal share from the uncle or uncle's son: the very same share shall equitably belong to all the brothers: or his son also shall get: afterwards cessation (of succession) takes place."[2]

"One himself", signifies, a brother,—"his son", the brother's son; "maintenance", means share; the question occurring,—'what share is he to get'? it is said "the paternal share"; "his son", intends the great-grandson of the person whose estate is divided, because the case of a grandson is considered; "afterwards", *i.e.*, after his son, "cessation", *i.e.*, cessation of succession takes place; the meaning is that the great-grandson's son is not entitled to any share.

Accordingly also Devala says:—"Partition of heritage among undivided parceners and second partition among divided parceners dwelling together, extends to the fourth in descent: this is the settled law."[3]—The meaning is that partition of heritage extends to the fourth degree counting from the proprietor. This rule is alike applicable if divided coparceners dwell together after reunion, by reason of the expression "dwelling together".

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[1] Nárada, XIII. 35. [2] II. Cole. Dig., 241, LXXIX.
[3] II. Cole. Dig., 242, LXXXI.

The term "the paternal share" being used by Kátyáyana, it is indicated that the allotment of shares is to be according to the fathers. Accordingly, Yájñavalkya says:—"Among grandsons by different fathers the allotment of shares is according to the fathers."[1] —The meaning is this:—The right by birth of grandsons to the estate of the grandfather is not distinguishable from that of the sons; hence although it is proper that the grandsons who are alike to the sons, should have a share equal to that of a son;—still their share being adjusted through their father, they are entitled to the shares of their fathers respectively; the participation, however, in the grandfather's property is not with reference to themselves. What is intended is this:—If unseparated brothers die leaving sons, and the number of sons be unequal, one leaving two sons, and others three, four, &c., the two shall take the share of their father by dividing it into two; the three, four, &c., also shall take the share of their fathers by dividing the same into three, four, &c., respectively: but the distribution of the grandfather's estate is not to be made according to the number of grandsons. In the same way when some of the brothers are alive, and the others die leaving sons, then the surviving brothers shall take their own shares, and the sons of the others shall take the shares of their fathers respectively: this distinction is based upon the authority of the texts. Hence this text indicating as it does, the case of similar co-heirs (*i.e.*, the case of grandsons only) is superfluous. Unequal distribution with specific deductions also is based upon the authority of texts. But equal participation which follows from the co-equality of ownership has been superfluously laid down by the texts.

17. Whatever property of the grandfather was lost by theft or the like, but has been recovered by the father, therein the grandsons participate, only by the choice of the father, in the same way as in the property acquired by the father. This has been declared by Manu,—"But if a father recovers his paternal property, which was not recovered before, he shall not, if unwilling, share that property with his sons, (like what is) acquired by himself."[2]

The term "acquired by himself" is to be construed by supplying the term "like what is"; or it may be construed in this way,—because that property passed from the grandfather, and was recovered by him alone, hence it became as it were his self-acquired property; the term "if unwilling" shows that it is by the choice of the father alone and not by the choice of the sons, that partition takes place of such property although inherited from the grandfather.

Likewise there is another passage of law:—"Whatever property of the grandfather was taken away, but has been recovered by the father by his own exertion, and whatever has been acquired

[1] Yájñavalkya, II. 120. [2] Manu, IX. 209.

by means of science, valour, &c., therein the father's ownership is ordained; he may at his pleasure, make a gift of it or allow partition to be made of such property; but in his absence, the sons are pronounced to be equal sharers."[1]

"Taken away", *i.e.*, wrongfully taken possession of by strangers; the meaning is, that it was not recovered by the grandfather but was recovered by the father: the meaning of the expression "by his own exertion", is, without the use of the grandfather's property; but if it be recovered by means of the grandfather's property, then the father obtains two shares on account of his being the acquirer by reason of the text of Brihaspati, namely,—"Among these, he who acquires by himself, shall get only two shares."[2] And this is to be construed also with what is acquired by means of science, &c.; but this will be (hereafter) stated at length.

The substance of what is intended in the above text is this:—Although the ownership of the sons and the grandsons in the property of the father and the grandfather arises by birth alone, still by reason of the texts previously cited, the sons being dependent on the father, with respect to the father's self-acquired property, and the father being entitled to superiority on account of his being the acquirer, the sons must give their assent to the disposal by the father of his self-acquired property excepting land and slaves, by reason of the previously cited text, namely,—"Immoveables and bipeds, &c." With respect to the grandfather's property, however, there is also the power of interdicting (any disposal by the father); but with respect to property which was not recovered by the grandfather but has been recovered by the father, the sons are certainly dependent on the father's will, although the property be the grandfather's; but as regards gems, pearls, &c., though inherited from the grandfather, the father alone has independence by reason of the previously cited texts, namely,—"The father is master of all the gems, pearls and corals, &c."[3]

18. Jímútaváhana says:—"When partition is made by the brothers after the death of the father, then as regards the paternal estate too, it should take place after the death of both the parents, since the death of the father as well as of the mother is mentioned (in the text of Manu). The opinion of the author of the Sangraha, that the death of the mother refers to the maternal property is not, however, to be preferred; because there is no authority to support the supposition that the term 'paternal' is the result of the uni-residual conjunctive compound, signifying, belonging to the *parents*. And because, if this be taken to be a provision regarding partition of the mother's estate, then there would be tautology, since partition of the mother's estate has been subsequently declared (by Manu) in the text,—'But when the mother is

[1] Brihaspati, XXV. 12 and 13. [2] Brihaspati, XXV. 77.
[3] I. Cole. Dig., 411, XIII.

dead, let all the uterine brothers and the uterine sisters equally divide the maternal estate.'[1]—Yájñavalkya also has, in the following text, namely,—'Let sons divide equally the effects and the debts, after the death of both parents: but daughters share the residue of their mother's property after payment of her debts; and the (male) issue, in default of daughters;'[2]—declared the partition of the mother's estate in the passage, 'but daughters, &c.'. And the construction intended (of the first part of this text) is not that 'Let sons divide the effects of both parents,'—but that 'after the death of both parents': it is, however, by implication that the relation, namely,—'the effects and debts *of the father*',—is obtained, because in the latter part the partition of the mother's effects and debts has been mentioned. Accordingly in the previously cited text of Sankha and Likhita, namely,—'Since the support of the family depends on wealth, the sons are not independent when the father is alive, as also while the mother is so,'—the meaning expressed by the portion 'as also while the mother is so',—is, that the uterine brothers are not independent of the mother, and are not entitled to effect partition even while she is alive. Hence also in the text of Vyása, namely,—'For brothers, a common abode is ordained so long as both the parents are alive: if separated after their death, the religious merit of them increases,'[3]—separation being prohibited by the injunction regarding the common abode, and partition being prohibited in the lifetime of the father and the mother, the association of their lives is not intended by the passage, 'while the parents are alive': hence if any one of the parents be living, partition is not lawful; but it is so, when both are gone to rest.

"Also in the text of Brihaspati, namely,—'On the death of the parents, partition among brothers is allowed, and even while they are both living, it is right if the mother be past child-bearing,'[4] —since partition during the lifetime of the mother who is past child-bearing, cannot be relative to the mother's property, and since the very partition which is mentioned to take place after the death of both parents, and which is referred to by the particle 'even' in the passage 'even while they are both living'—is pronounced to be right; therefore, it is settled that the partition among brothers after the death of the parents is relative to the father's estate alone.

"Accordingly, Vyása propounds that if partition takes place in the lifetime of the mothers, it is to be made according to the mothers:—'If there be sons of one man, by different mothers, but equal in number and alike by class, a distribution among the mothers is approved.'[5] Likewise Brihaspati ordains,—'If there be many sprung from one, alike in number and class, but born of rival mothers, then according to law, partition should be made by them, by distribution amongst the mothers.'[6] Since there is not in reality

[1] Manu, IX. 192.
[2] Yájñavalkya, II. 117.
[3] II. Cole. Dig., 284, CXIII.
[4] Brihaspati, XXV. 1
[5] Not found in Cole. Dig.
[6] Brihaspati, XXV. 15.

any difference in the shares of (the different sets of) the half brothers, for they are equal in number and in class, hence the provision of allotment of shares to the mothers refers to the superiority of the mothers. And the purport is, that this is not a partition among the sons, but the partition is to be made avowing it to be one among the mothers. Therefore as in the mother's property, so in this case also, the separation of the sons from each other is not lawful in the lifetime of the mother. Hence what is said by Gautama and other sages, namely,—'In partition there is increase of religious merit,'[1]—must be understood to refer to one after the death of the mother."

This has already been refuted on the ground that some spiritual object will have to be assumed, if it be held that the mother's death has reference to paternal property.

As for what has been said, namely,—that the term "paternal" has no reference to the mother's property, because there is no authority for considering it to be the result of the uni-residual conjunctive compound, and because there would be tautology;—that again is unreasonable. Because for fear of the objection of assuming some spiritual object it cannot but be admitted that the term is the result of the uni-residual conjunctive compound; the objection of tautology, however, is not consistent with reason, for the injunction regarding the partition of maternal property may rightly be taken to be a repetition with a view to lay down particular rules.

As for the text of Yájñavalkya, the author of the Mitákshará construes it thus, "Let the sons divide the effects of the father and the mother"; he has removed the objection of tautology by introducing the latter half thus, "The sage states an exception in regard to the mother's separate property"; and he has,—after explaining the text, "and the issue succeeds on their default", thus, "In default of daughters, the issue, *i.e.*, the son and the like, shall take the mother's wealth after payment of debts",—said,—"Although this is established by the first part of the text, namely,—'Let the sons divide equally the effects and the debts, after the death of the parents',—still it is again declared for the sake of greater perspicuity".

Nor can it be argued that let this only be the construction here, namely, "after the death of the parents"; the terms "the effects and the debts" become by implication connected with "father's", since in the latter half, the partition of the mother's estate is ordained; and thus the portion,—"the issue succeeds on their default",—does not become a useless repetition. Because, the terms "the effects and the debts" implying as they do, relation to some person, the question occurs who is that person, consequently the construction of these terms with the term "of the parents" which

[1] Gautama, XXVIII. 4.

occurs in the same sentence—is preferable to the construction of these terms with the term "of the father", which is to be known by implication after the perusal of the whole verse; and it is proper even to admit, as a consequence of such a construction, that the portion, "the issue succeeds on their default",—is a mere repetition. According to the opinion of those, however, who explain the term "issue" to mean, the issue of the daughter, *i.e.*, the daughter's son,—there can be no fear whatever of that portion being a useless repetition. All this will be dwelt upon at length when the partition of *woman's property* will be discussed.

The absence of independence in the lifetime of the mother, as ordained by Sankha and Likhita, may certainly be reconciled by supposing it to be intended to extol the veneration due to the mother, or to refer to her property.

Also the text of Vyása, namely,—"For brothers, &c.",—merely lays down that during the joint lives of both the parents, the common abode is approved; neither is there any defect in considering that the association of their lives is intended by the phrase, "while both the parents are alive". But, in fact, the joint abode is preferable also after the death of the parents by reason of the text "The eldest alone shall take the entire property, &c.", and partition is calculated to increase religious merit, and religious duties such as the five great sacrifices must be performed even while the mother is alive, hence for the purpose of increasing it, partition is certainly proper.

As to what has been said, namely, "Also in the text of Brihaspati,—'On the death of parents', &c., since partition during the lifetime of the mother who is past child-bearing, &c.",—the answer is: By the first half (of the text) it is declared that the common abode is preferable while both parents are alive, and that partition takes place after their death; therefore the meaning (of the latter half) is, that inasmuch as there is a possibility of the birth of other sons if the mother be not past child-bearing, and the dissipation of the means of their support is censured by the text,—"Those that are born and those that are not yet begotten, &c.",—but that it is not possible if the mother be past child-bearing, therefore partition is approved just as when the father's affections become extinct: that being so, the mother being past child-bearing, there is no possibility of the birth of daughters who are entitled to her wealth (in preference to sons), therefore the sons may, by her choice, divide her wealth also; hence this text may relate also to maternal property. Therefore the objection has no force.

As for what has been said in the texts of Vyása aand Brihaspati, namely, that partition by half brothers is to be made by a distribution amongst the mothers;—that is not against my opinion. Since, just as by virtue of the texts, like—"A person with his

family shall not be independent while the parents are alive",[1]—the dependence on the father and mother continues even after partition, so likewise by virtue of the above texts, (the half brothers) shall, as long as the mothers are alive, remain obedient to their orders, thinking the partition to be as between the mothers only. How from this can it follow, that there is no right to the partition of the paternal property while the mother is alive? There is no use in enlarging upon the subject.

19. As in the case of partition during the lifetime of the father, the father is to make his wives equal sharers with his sons, so also in the case of partition after his death the sons are to make them partakers of shares equal to those of themselves: this has been ordained by Yájñavalkya,—"The mother also, of those effecting partition after the death of the father, shall get an equal share."[2] If stridhana has not been given (to her): when it has been given then it is ordained that a half share shall be allotted. Notwithstanding, the term "half" here does not signify a moiety (or equal division); but what is intended is, that so much shall be given which (together with her strìdhana) will make her an equal sharer with a son.

The term "mother" which signifies the parent, does not include a step-mother also; for the term "mother" which has been once used (in the text) cannot reasonably convey two meanings, one of which is primary and the other secondary.

From the following text of Vyása, namely,—"The father's sonless wives, however, shall be made equal sharers; as also the paternal grandmothers, for they are declared to be equal to mothers;"[3] —and from the use of the term "wives" in the text of Yogísvara (§ 10), it follows that, in partition during the lifetime of the father, all his wives without distinction are entitled to equal shares with the sons; for the terms "son" and "wife" convey meanings in correlation with "father", hence there can be no objection of their bearing primary and secondary meanings. But in partition after the death of the father, it is effected by the sons, and the term "mother" which appears to be used in correlation to them, cannot, by reason of the variableness in its meaning, imply a step-mother also; therefore those only who are mothers of sons, are entitled to share equally with their own sons. But those who are sonless are entitled to food and raiment only, like the wives of coparceners who are undivided or reunited. And this is reasonable, since the father is independent in partition during his lifetime, and the sons are independent in partition after his death; and since this appears to be the intention of the use of the term "mother" and the term "wife". It is also reasonable that those who are destitute of sons are entitled only to maintenance. This appears to be the intention of various commentaries.

[1] Manu, IX. 104. [2] Yájñavalkya, II. 123.
[3] II. Cole. Dig., 243, LXXXIV.

That all the wives of the father, whether sonless or having sons, are entitled to shares equally with the sons, even in partition after the father's death—appears to be the opinion of the learned author of the Mitákshará; since he introduces the text of Yájñavalkya, namely, "The mothers also of those effecting partition after the death, &c.,"—with these remarks:—"It has been ordained that the wives are entitled to shares equally with the sons in partition during the lifetime of the father, now the sage declares that the wives are entitled to share equally with the sons in partition after the death of the father."

Accordingly, also the author of the Madanaratna says:—"The use of the term "mother" indicates also the sonless step-mothers, as also the paternal grandmothers, agreeably to the text of Vyása,—'The father's sonless wives, &c.'"

The following seems to be the intention of the authors of the Mitákshará and the Madanaratna:—And this is consistent with reason, since otherwise, in the phrase "father's wives", (in Vyása's text) the use of the term "father", the correlative of "son",—would be useless. Had the participation of equal shares with the sons, referred to the partition in the lifetime of the father, then the term "mothers" would have been used instead of "the father's wives". Hence it follows that is only in consequence of their being the wives of the father, that they get equal shares with the sons, whether the partition takes place in the lifetime of the father or after his death.

But if the genitive case in the term "father's" (in Vyása's text) be held to be used to denote the agent, then what is affirmed (in the text of Vyása) amounts to this,—"The wives are equal sharers in partition made *by the father*," and it follows by implication that the term "wives" stands in correlation with him; hence it is proper to say that this text relates only to partition in the lifetime of the father. But in Yájñavalkya's text the term "mother" cannot properly refer to the parent as well as to the step-mother; and for its correlative the term "sons" occurs suggested by the term "mother" itself; therefore in order that the term "mother" may have its primary meaning it is proper that it should imply the parent alone. This is also the practice of the learned. This is here reasonable; this ought to be accepted: there is no use in dilating upon the matter.

Brihaspati ordains:—"After his death, however, the mother (*jananí*) or the daughter gets an equal share."[1] Here by the context the term "his" means, the father's.

20. If at the time when the father is dead, any of the brothers be uninitiated, then after having performed their initiation at the charge of the whole estate, the residue shall be divided according to shares. Thus Yájñavalkya says:—"The uninitiated ought to be

[1] Brihaspati, XXV. 64.

initiated by the brothers who have been previously initiated."[1] From the mention of the term "by the brothers", it appears that "the uninitiated" brothers are intended. The mere provision that they ought to be initiated, having no concern with the subject of the Partition of Heritage, what is intended is,—at the charge of the whole estate. Accordingly, Vyása says:—"Those, however, among them, that are uninitiated shall be initiated by the elder brothers, out of the patrimony; so also the maiden daughters according to law."[2]

Nárada declares the necessity of the initiation of the uninitiated, although no wealth of the father exists, thus:—"Even if no wealth of the father exists, the initiation must, without fail, be made by brothers already initiated contributing funds out of their own shares."[3]

21. The marriage of unmarried sisters also is necessary. If there be paternal property, then shares also are to be allotted to them. This is ordained by Yájñavalkya,—"The sisters also, giving (them) a fourth part from one's own share."[4] The passage "uninitiated ought to be initiated" (occurring in the previous text, § 20,) is to be construed with this text. Manu says:—"To the maiden daughters, however, let the brothers give separately from their own shares; (they) shall be degraded, if unwilling to give a fourth part from every one's share."[5]

In the Ratnákara and the Chintámani it has been explained that, here the meaning of both the texts (of Manu and Yájñavalkya) is not that to each of the sisters is to be given by all the brothers a fourth part of every one's own allotted share; for in that case she who has many brothers would get much wealth, and a brother who has many sisters would be deprived of everything; therefore what is intended, is only the allotment of so much property as is sufficient for marriage. And in support of their view the following text of Vishṇu is set forth:—"The marriage of the maiden daughters, however, shall be effected according to the estate."[6]

This is not reasonable. Since it cannot properly be said that in neither of the texts the allotment of shares is intended; and since the sin for refusal to allot shares has been mentioned as distinguished from the sin for non-performance of marriage; otherwise, also the declaration of sin for refusal to give (shares) in the text,—"shall be degraded if unwilling to give",—would have to be interpreted to intend sin for non-performance of marriage.

For this reason Medhátithi and the author of the Mitákshará and others have explained the texts thus:—The ablative case in the terms "from one's own share" (*nijádamsát*) and "from every one's share" (*svát svádamsát*) is, however, used instead of a

[1] Yájñavalkya, II. 124.
[2] II. Cole. Dig., 297, CXXV.
[3] Nárada, XIII. 34.
[4] Yájñavalkya, II. 124.
[5] Manu, IX. 118.
[6] Vishṇu. XVIII. 34.

participle understood; that being so, the meaning is *having regard to* that (*i.e.*, "one's own share" and "every one's share"). Hence, to a maiden daughter shall be allotted a fourth part of such a share as is assignable to a son of the same class with her. Accordingly the following meaning is deduced: if the maiden be daughter of a Bráhminí, her share is the quarter part of what will be stated hereafter to be the allotment for a son by a Bráhminí wife; similarly also if the maiden be daughter of a Kshatriyá or the like. For instance if a Bráhminí is the only wife of any person, and she has one son and one daughter; then dividing the whole paternal property into two parts, and sub-dividing one such part into four shares, he shall give one such share to the sister, and himself take the residue. Similarly, if there be two sons and one maiden daughter, then dividing the entire property into three parts, and sub-dividing one such part into four shares, one such share shall be given to the sister, and the remainder shall be divided by the two brothers, according to shares. But if there be one son and two maiden daughters, then dividing the property into three parts and sub-dividing one such part into four shares, and allotting two shares to the two maiden daughters, the rest shall be taken by him. Similarly, when the brothers and sisters are of the same class, whether their number is equal (or unequal), it is to be understood that in all cases the sisters are entitled to get a quarter of the share assignable to a brother of the same class. But if there be one son by a Bráhminí wife and one daughter by a Kshatriyá wife, then dividing the paternal property into seven parts and sub-dividing the three parts which would be the allotment for a son by a Kshatriyá wife into four shares, and giving one such share to the daughter of the Kshatriyá wife, the son of the Bráhminí wife shall take the residue. But when there are two sons by the Bráhminí wife and one daughter by the Kshatriyá wife, then the paternal estate is to be divided into eleven parts; and the three parts which would be assignable to a son by a Kshatriyá wife, must be sub-divided into four shares; and giving one such share to the daughter of the Kshatriyá, the two sons of the Bráhminí shall take the whole of the rest dividing the same. It must be similarly understood in any case of equal or unequal number of brothers and sisters dissimilar in caste.

Also Vishṇu says:—"Mothers are entitled to shares according to the shares of the sons; also the maiden daughters, according to the shares of the sons: as the sons are entitled to four shares, or three, or two, or one, according to the castes, so are the wives of the same caste."[1] Here by the passage "the maiden daughters are entitled to shares according to the sons",—although it appears that the daughters are entitled to all the shares, namely, four, &c., (equally with the sons of the same class); still because Manu and Yogísvara have declared the allotment (to them) of a fourth part of a share in the passages "from one's own share", and 'from every

[1] Vishṇu, XVIII. 34, 35, and 36.

one's share", therefore the accordance with the shares of the son is to be understood in that way only; but they are not entitled to shares equal to those of the brothers of the same class. Thus there is no conflict.

Brihaspati distinctly says:—"The mothers, however, are equal sharers with them, and the maiden daughters are entitled to a quarter share."[1] This is approved also by Kátyáyana, for he says:—"For unmarried daughters, a fourth share is intended, and for the sons, three shares: but equality is ordained if the property be small." The meaning, however, of the passage "but equality, &c.", is this:—if there be not paternal property even sufficient for marriage, then the daughters are entitled to shares equally with the sons.

Also the text of Vishṇu, namely, "The marriage of the maiden daughters, &c.", (para. 2)—is not opposed to the explanation given by Medhátithi and others. The marriage of the unmarried daughters of the father, *i.e.*, of their own sisters, shall be performed according to wealth. By this, only the necessity of marriage is ordained, but not the giving or not giving of shares.

The author of the Smritichandriká, however, has, in accordance with the following text of Devala, namely,—"And to the maiden daughters shall be given the father's wealth, (and) nuptial property"[2]—held that property sufficient for marriage is to be allotted; his intention is that the qualifying term "nuptial" in the passage "nuptial property" would otherwise become meaningless.

What we say here is this. The passage "To the maiden daughters shall be given paternal wealth", constitutes a distinct injunction; and that consists only of a fourth part, according to Manu and others. And the portion "nuptial property", forms a different injunction, being in accordance with the following text of Sankha;—"When the heritage is divided, a maiden daughter gets the ornaments and nuptial strìdhana."[3] And this text of Sankha has been explained by the venerable Vidyáranya in his commentary on the Institutes of Parásara, thus:—"At the time of partition of the paternal estate, a maiden daughter gets also the ornaments put on by her, as is declared by Sankha." But if the meaning (of the text of Devala) were that "the father's wealth" which is "nuptial", *i.e.*, so much as is sufficient for marriage, shall be given to the maiden daughters; then the term "property" would be superfluous. Therefore, it is reasonable to suppose that here are two distinct injunctions.

This text (of Devala,) however, is read by the author of the Dáyatattva, thus,—"To the maiden daughters shall be given nuptial property from the father's wealth." It is to be observed that in this reading too, the explanation given by us deserves to be preferred, so that this text may have the same meaning with the

[1] Brihaspati, XXV. 64. [2] II. Cole. Dig., 296, CXXIV.
[3] II. Cole. Dig., 299, CXXIX.

text of Sankha; it does not, however, intend that property sufficient for marriage is to be given.

Now although sometimes the term "sister" and sometimes the term "maiden daughter, &c.", are used in the texts of Manu and others, still it is to be held that the subject being the partition by brothers, they convey the same meaning by interpreting the term "sister" to be used in correlation with the brothers, and the term "daughter" in correlation with their father.

Hence in partition after the death of the father, the (maiden) sisters are entitled to get shares out of the paternal property; and not that they are only to be disposed of in marriage. But if (partition takes place) previously (to the father's decease) they get only whatever the father gives, for there is no particular text on the point.

But Jímútavāhana says:—Since Manu and Yájñavalkya have respectively declared "let the brothers *give*" and "*giving* a fourth part", therefore the sisters are not to take the fourth part, under the impression that they have a right thereto: certainly it is never said that let one brother *give* from his own share to another brother, what the latter has a right to get: similarly (is to be understood) also the giving of a fourth part. The brothers incur moral guilt, if they refuse to give; but the sister has no right to compel them.

This is not reasonable. For this conclusion does not follow from what is merely a variety of expression, just as in the texts,—"He may separate the sons by his choice" and "giving deductions to the eldest" and the like.

As for what he has said again, namely,—"Since in the text of Nárada,—'Of those whose forms of initiation have not been regularly performed by the father, these ceremonies must be performed by the brothers out of the patrimony',[1]—the pronoun 'whose' (*yeshám*) is used in the masculine gender; and since immediately after this text, is commenced the following text,—'If no wealth of the father exists, &c.', therefore the text refers only to the initiation of a brother. Hence, when there is paternal property then since the necessity of the sister's marriage appears from the texts of Manu and other sages, therefore the intention is that only so much property as is sufficient for marriage shall be given."

That is to be rejected; for the necessity of the sister's marriage appears from other texts. Thus in the text,—"The father, the paternal grandfather, a brother, a kinsman (*sakulyá*), the mother likewise; on failure of the first among these the next in order who is of sane mind is the giver of a girl in marriage; and omitting to dispose of the girl in marriage becomes guilty of causing abortion at every recurrence of the menses"[2]—Yogísvara

[1] Nárada, XIII. 33.

[2] Yájñavalkya, I. 63, 64.

declares that a brother too failing to perform the ceremony of a sister's marriage becomes guilty of causing abortion. Hence because the text of Nárada is also based upon the same foundation with Yogísvara's text, it is proper to admit that the terms "whose" (*yeshám*) and "of those" (*teshám*) are in the genitive case in the neuter gender, by reason of the rule that neuter gender is to be used when both the sexes are intended and by reason of the rule that a term is to be taken in its widest acceptance; or that the terms are the results of the uni-residual conjunctive compound of dissimilar terms.

The author of the Madanaratna reads a text of Brihaspati, thus,—"The younger brothers, however, who may be uninitiated, shall be initiated by the elder ones out of the common paternal property"—intending that the term *yavíyasah* "younger" (in later Sanskrit *yavíyámsah*) is used in the Vedic form; and explains it thus,—the term "brothers" is illustrative, it includes the sisters also.

Here again it is to be understood that the maiden daughters are intended by reason of association with initiation, and because the adjective "unmarried" is mentioned in the text (of Kátyáyana), "For unmarried daughters, &c.": hence the maiden sisters alone get a quarter share, the others get some trifle, that being only reasonable. This will be explained in detail while treating of the mother's property.

22. Of immoveable property, whether ancestral or self-acquired, the father may make gift and the like only with the consent of the sons, by reason of the text previously cited, *viz.*,—"Immoveables and bipeds, although acquired by a man himself, shall not be gifted away or sold without the consent of all the sons."[1] By the passage "although acquired by a man himself" it is *a fortiori* shewn that the consent of the sons is indispensable in (the disposal of) ancestral property. But in case of distress of the whole family, any member is competent, even without the consent of the rest, to make a sale, gift or the like (disposal) of immoveable property, since the support of the family is indispensably necessary, by reason of the following text,—"Even a single coparcener may make a gift, mortgage or sale of immoveable property at a time of danger, for a family purpose and especially for religious purposes."[2]—By "religious purposes" are intended, indispensable religious ceremonies, such as the srádddha of the father.

But a passage of law runs as follows:—"Separated or unseparated kinsmen are equal in respect of immoveable property; for in both cases one member is incompetent to make a gift, mortgage or sale;"[3]—which is to be interpreted in this way. Although the

[1] I. Cole. Dig., 411, XIV. [2] I. Cole. Dig., 458, LV.
[3] Brihaspati, XXV.

incompetency without the consent of the others, is settled by reason of the co-equality of ownership, in joint property, of undivided coparceners, still the same is here particularly mentioned in respect of immoveable property for the purpose of extolling its worth. But as regards the separated coparceners, what is said in this text is for the purpose of facility of proof in case of dispute; for if, at a future time, the question arises whether the family is separated or undivided, then in that case, the fact of partition must be made out by the evidence of witnesses or the like; because otherwise the gift or the like of joint property would be invalid. But if there be consent of the other co-sharers, the transaction is valid, independently of partition. Nor can it be said that let the ownership of even the separated coparceners be, as is ordained by this text, common in immoveable property. For then it would follow that partition (of immoveable property) takes place for some spiritual purpose. Hence the validity of the gift or the like, as regards its essence, may be established even in the absence of the consent of the other co-sharers; and the determination of the dispute can take place on proof of partition. The consent of the separated co-sharers is like the consent of the village-men and the consent of the headman of the village, as in the text,—"Land passes by six formalities: by the consent of (the owner) himself, of the village-men, of kinsmen, of the headman of the village, and of heirs, and by gift of gold and water."[1] But the consent of the headman is also for the purpose of preventing boundary dispute. The consent of the kinsmen and the heirs, however, is to be explained in the very same way as is previously mentioned; accordingly, there is another passage of law, *viz.*,—"Acceptance shall be public, especially of immoveable property."[2] Otherwise, gift or other alienation would be invalid for want of the consent of also the village-men and the headman of the village. The passage, "by gift of gold and water", shows that since the sale of immoveable property is prohibited by the text,—"There can be no sale of immoveable property; mortgage may be made with the consent,"[3]—and since gift is praised in the text,—"He who accepts land and he who gives it, they both are performers of a virtuous act and will certainly go to heaven;"[4]—therefore when a sale is indispensable for the maintenance of the family and the like (necessity), the sale of immoveable property shall be made with the formalities of gift by giving gold and water to the purchasers, so that there may be at least one element of gift.

But Jímútaváhana, after citing the two texts of Vyása, namely,—"One parcener shall not, without the consent of the others, make a gift or sale of the whole immoveable property common to the family: separated or unseparated kinsmen are equal in respect of immoveable property; for in both cases a single

[1] I. Cole. Dig., 441, XXXIII.
[2] Yájñavalkya, II. 176.
[3] Not found.
[4] I. Cole. Dig., 444, XLI.

member is incompetent to make a gift, mortgage or sale,"[1]—says:—"These are not for establishing that one coparcener has no power to make a sale, gift or other transfer. Since the proprietary right which is defined to consist in the power of disposal according to pleasure, exists without distinction in immoveable as in any other property, these texts cannot show the incompleteness of the relinquishment of right; for a fact cannot be altered by a hundred texts. But the prohibition is levelled against wicked persons, and is intended to show that an alienation is sinful if it is made to the injury of the family when there is no necessity for alienation, such as distress of the family. Accordingly Nárada authorizes generally a sale or any other alienation:—'When there are many persons sprung from one man who have duties apart and transactions apart, and are separate in business and character, if they be not accordant in affairs, should they give or sell their own shares, they may do all that as they please, for they are masters of their own wealth.'[2] Since this text specifies the reason in the passage 'for they are masters of their own wealth', it relates to immoveables also, for else it would be unmeaning."

This is all right, but that it is not reasonable to say that it is intended to show that an alienation is sinful. Since the sale of immoveable property even by all the co-sharers being prohibited in the absence of necessity, an objection would arise that the use of the term "a single member" is unmeaning; and since it is unreasonable to assume a spiritual object in a rule of positive law, when there may be a visible object, such as facility of proof in case of dispute: otherwise, even in case of the consent of co-sharers, the objection of injuring the family may arise; hence the texts would have to be interpreted as referring solely to sin in consequence of injuring the family, as is laid down in other texts.

23. Here, again, partition at the desire of the sons, whether in the lifetime of the father or after his death, may take place by the choice of a single coparcener, since there is no distinction. Hence what, after premising partition, is said by Kátyáyana, in the text,—"The wealth of those who have not attained to maturity and likewise of those who are absent in a distant place, shall be deposited, free from disbursement, with relatives and friends,"[3]—is also in support of this view. Otherwise if partition could not take place without their consent, the declaration of the deposit of their wealth with relatives and friends would be unreasonable. So also Vishṇu says:—"Likewise the wealth of a minor shall be preserved till he attains to majority."[4]

23*a*. This distribution among sons extends equally to them and to grandsons and great-grandsons in the male line. There is not here an order of succession following the order of proximity

[1] Found in Brihaspati, XXV. 93.
[2] Nárada, XIII, 42 and 43.
[3] Cole. Dig., 576, CCCCLIII.
[4] Vishṇu, III. 65.

according to birth. For the three descendants, namely, the son, the grandson and the great-grandson are competent to offer oblations in the *parva* occasions. Hence it is that Devala says :—"A father, a grandfather and likewise a great-grandfather assiduously cherish a new-born son, as birds the holy fig-tree, (reflecting) he will perform to us our sráddha with honey, meat and herbs, with milk, and with sweet rice and milk in the season of rains and under the asterism Maghá."[1] Likewise Sankha, Likhita and Gautama say :—"A father, a grandfather and likewise a great-grandfather welcome a new-born son as birds the holy fig-tree, (reflecting) he will propitiate us with honey and meat and especially the flesh of the rhinoceros and with milk, and with sweet rice and milk in the season of rains and under the asterism Maghá."[2] Thus the competency being equal and the right by birth also being equal, equal participation would have followed but is prevented by the text,—"Among grandsons by different fathers the allotment of shares is according to the fathers."[3]

Jímútaváhana says :—"The grandsons and the great-grandsons whose fathers are alive cannot confer oblations in the *parva* occasions; they are not therefore entitled to the estate of their grandfather and great-grandfather respectively. If there be one son, and sons of another son (who is dead,) then one share appertains to the surviving son, and the other share goes to all the grandsons; for their interest in the grandfather's wealth is founded on their relation by birth to their own father; consequently they have a right to just so much as should have been their father's share."

This, however, is not acceptable; because it has been established that in the grandfather's property the grandsons also acquire ownership by birth; hence the equality of the grandson's share (with a son's share) in the grandfather's property is based upon the authority of the texts, and not founded upon any equitable principle.

As for what he has further said, namely,—"Where one brother has left a large number of sons, and another a smaller number, there the text,—'Among grandsons by different fathers, &c.,'—is intended to prevent equal distribution amongst all of them by reason of their being grandsons; but if the grandsons had ownership in the estate of the grandfather while the father is alive, then in the case of partition by two brothers, one of whom has sons and the other has none, the sons also of that brother would have been entitled to share by reason of the equality of right."

That has already been refuted. By this again is removed also the above-mentioned incongruity. Hence is refuted also the objection that when there are uncles and nephews, then because the

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[1] II. Cole. Dig., 242, LXXX. [2] Not found.
[3] Yájñavalkya, II. 120.

property belonged to the father of the uncles, therefore the nephews would get no share by reason of the absence of their ownership.

As for what has been said, namely,—"The grandsons and the great-grandsons whose fathers are alive, &c.,"—that too is wrong. For the capacity for presenting funeral oblations is not alone the criterion of the right to heritage, since the younger brothers are entitled to the heritage although they are not competent to offer oblations while there is the eldest brother. And the fitness for presenting oblations, (which the younger brothers have) is not wanting in grandsons too (while their father is alive). But when there are many claimants to the heritage, amongst the gentiles (*gotrajas*,) and the like, then the fact of conferring benefits on the proprietor of the wealth by means of the offering of oblations and the like,—only excludes those that do not confer (such) benefit: it is not, however, the criterion here.

24. Whether partition is made in the lifetime of the father or after his death, if the pregnancy of any of the father's wives or of any of a brother's wives be evident, then partition ought to be postponed till their confinement, by reason of the following text of Vasishṭha,—"Now, the partition of heritage amongst brothers takes place after childless women beget sons." From the passage "after childless wives, etc."[1] it appears that the postponement is to be made if their pregnancy is evident, but not if it is not evident.

Hence it is that Yogísvara has declared the mode of participation by one who is born subsequently to partition;—"One who is begotten by one of equal class, after the coparceners have been separated, takes the share."[2] When the coparceners have been separated during the lifetime of the parents, whether by the desire of the father or by the desire of the sons, one who is subsequently brought forth by a wife of equal caste obtains a share: 'obtains a share' means, gets the share allotted to the parents. The meaning is, that after the parents, he alone gets their share: the distinction is, that he gets the mother's share if there be no daughters. From the adjective "one of equal caste", (*savarnáyám*) it appears that one who is begotten, however, on a wife of a different caste, gets only his proper share from the father's wealth, and the entire share of his mother, should there be no daughter. For this very reason, a son begotten by a wife of an unequal caste after partition, gets only the share proper to his caste, although the partition took place during the lifetime of the father: it must not be concluded that he is entitled to obtain all that belonged to the father.

With this very intention, Manu says:—"But he who is born after partition shall get only the paternal wealth."[3] He shall get "the paternal wealth", *i.e.*, the wealth belonging to both the

[1] Vasishṭha, XVII. 41. [2] Yájñavalkya, II. 122.
[3] Manu, IX. 216.

parents in the manner mentioned above; the term "only" shows that the brothers are not to make him participant of a share equal to their own, by deducting from their own shares. Also Gautama says:—"One born after partition (shall get) the paternal (share) only."[1]

But those who have been separated during the lifetime of the father, not knowing at the time that the mother or her co-wife was with child, shall make the brother, born subsequently to partition, participant of a share equal to their own by contributions from their own shares. Thus Vishnu says:—"To one born after partition, his share shall be given by those whe have been separated with the father."[2] And it is the father alone who, by taking that share of the new-born son, given by the brothers, shall maintain him; by reason of his having a preferable right thereto, and by reason of the previously cited text, namely, "The wealth of those who have not attained to maturity, &c." (§ 23).

Also the text, namely,—"One born before has no claim in the allotment of the parents; nor one begotten after partition, in that of a brother"[3]—refers to this very subject. The meaning is, one born before partition, and (consequently) who has received his share of the paternal property, has no claim, *i.e.*, has no ownership in the allotment of the parents; and one begotten after partition has no claim in the share of a brother who has previously been separated.

And also what is acquired by the father, after partition, belongs only to the son born after partition, by reason of the following text of Brihaspati;—"Whatever is acquired by the father himself who has been separated with his sons; all that belongs to the son born after partition; thereto the sons born before have no claim; as in the wealth, so in the debts likewise, and in gifts, mortgages and purchases. They have no claims on each other, except for acts of mourning, and libations of water."[4] He also says;—"The younger brothers of those who have made a partition with the father, whether children of the same or of a different mother, shall, however, take the paternal allotment."[5] The reason here is the same as is declared in the text,—"One born before has no claim, &c."

But if some of the sons have been reunited with the father, then the after-born son is not entitled to the whole of the paternal property, but he shall participate with them. This is declared by Manu;—"Or he shall participate with those that are reunited with him:"[6] "him", *i.e.*, the father.

If after the paternal property has been taken by the brothers, on partition after the death of the father, a son is begotten on a

[1] Gautama, XXVIII. 29.
[2] Vishnu, XVII. 3.
Brihaspati, XXV. 18.
[4] Brihaspati, XXV. 19 and 20.
[5] *Ibid*, XXV. 17.
[6] Manu, IX. 216.

wife of the father, her pregnancy being not known at the time of partition; they shall make him participant of a share equal to theirs, out of their own shares as corrected for income and expenditure. This is said by Yájñavalkya; "Or his allotment must be made out of the visible estate corrected for income and expenditure."[1] "Visible estate" means what has been taken by the brothers. "Income" means monthly, daily and annual increment to the visible estate. "Expenditure" means the liquidation of the father's debts, and the expenses attending the initiation of brothers and sisters, for it must be made at the expense of the common property; it does not, however, include any expense that a brother had to incur, for that has no concern with it. The meaning is, that out of the paternal property corrected for such income and expenditure, one born after partition shall get an equal share with those previously separated. What is said is this: including in the share of each of the co-sharers, the income arising therefrom, and subtracting the necessary common expenditure, and taking a part from the remainder of every one's share, a (posthumous) son born after partition shall be made an equal sharer. The particle "or" signifies an alternative based on distinct circumstances, with reference to the first half of this text, namely,—"One who is begotten by one of equal caste after the coparceners have been separated takes the share,"—and the distinct circumstances (to which the first half is applicable) have already been set forth.

Haláyudha, however, after interpreting the term "out of the visible estate" to mean, from the perceptible property of the father, but not from what is concealed,—says that this alternative refers to a son born after partition, who is possessed of less good qualities than the separated brothers.

This is to be rejected. Since concealed property too, when discovered after partition, is liable to be divided in equal shares, and there is no authority to show the inapplicability of the above rule to this case; and since in supposing the above text to embody this restriction, there would arise the objection of assuming some spiritual purpose; and since the text becomes perfectly consistent by the interpretation put by Vijñánesvara.

25. The mode of partition among brothers dissimilar in caste is declared by Yogísvara:—"The sons of a Bráhmin, in the several castes, (*varṇasas*), have four shares or three or two or one; the sons of a Kshatriyá have three shares or two or one; and the sons of a Vaisyá have two shares or one."[2]

In the text, namely,—"The wives of a Bráhmin, a Kshatriyá and a Vaisyá may, as regards the castes, be three, two and one respectively; the wife of a Súdrá is one of the same caste,"[3]—Yogísvara has declared that a Bráhmin may have three wives

[1] Yájñavalkya, II. 122. [2] Yájñavalkya, II. 125.
[3] Yájñavalkya, I. 57.

belonging to the (inferior) castes, different from that of himself; (similarly) a Kshatriyá two, and a Vaisyá one: and including one of the same castes with them, a Bráhmin may have four, a Kshatriyá three, and a Vaisyá two. If the enumeration referred to wives of similar as well as dissimilar castes, then a wife of the Súdrá caste being excluded, the two of a Vaisyá also, would be reduced to one of his own caste; consequently the part "the wife of a Súdrá is one of his own caste" could not consistently be put in contradistinction to a Vaisyá; hence this enumeration is intended to have reference to the wives of dissimilar castes. This text has been so explained by Vijñánayogi.

That being so, (the meaning of the text in the first para. is this:— "The sons of a Bráhmin" born of wives belonging to the Bráhmana and other castes respectively; "in the several castes, (*varṇasas*)", *i.e.*, according to the castes to which their mothers belong,—the affix *sas* (in *varṇasas*) shows that the term *varṇa* (caste) is in the locative case and bears a distributive sense, agreeably to the grammatical rule,—"To a noun in the singular number, signifying quantity, the particle *sas* is affixed in a distributive sense:"—to those who are begotten by a Bráhmin or the like father on a Kshatriyá or the like wife, is applied the term *játi* (mixed caste) such as that of Múrdhávasikta, and *játi* cannot possibly be comprised by the term "caste", therefore the meaning is, according to the castes to which the mothers belong; "have four shares or three or two or one",—what is said is, that the sons of a Bráhmin, born of a mother of the same caste, shall each get four shares; the sons of the same Bráhmin born of a Kshatriyá mother, three shares each; the sons of the same person, boru of a Vaisyá mother, two shares each; sons of the same person born of a Súdrá mother, one share each. The passage, "in the several castes", is to be construed with every clause in the latter half of the text: that being so, the sons of a Kshatriyá born of Kshatriyá and other mothers shall each respectively get three shares, or two, or one; the sons of a Vaisyá born of Vaisyá and Súdrá mothers shall each get two shares, or one respectively. A Súdrá cannot have a wife of a different caste, partition among his sons must be one among the sons of the same class,—which has been already mentioned.

Although the marriage of a Súdrá woman by a twice-born person is much censured, and espousing a Súdrá with the intent of having sons by her is on all hands prohibited, as in the text of Manu and Vishṇu,—"Men of the twice-born classes, who, through infatuation, marry women of the lowest caste, very soon degrade their family with their progeny to the state of Súdrá: according to Atri and the son of Utathya, he who marries a woman of the Súdrá caste becomes degraded instantly; according to Saunaka, by the birth of a son; and according to Bhrigu, by having issue by her"[1]—"by having issue by her", means by having issue born

[1] Manu, III. 15 and 16.

of the Súdrá wife alone;—and marriage of a Súdrá woman by a Bráhmin, however, is declared by them to be more reprehensible than by a Kshatriyá or Vaisyá, thus,—"A Bráhmin, if he takes a Súdrá woman to his bed, becomes degraded, and by begetting a son on her, he loses his Bráhminhood too;"[1]—Yogísvara also says,—"The marriage of Súdrá wives by the twice-born persons, as has been declared (by other sages), is not approved by me, inasmuch as a person himself is born of her (in the shape of a son),"[2] and it may hence occur, that as there cannot be a son begotten by a Bráhmin, &c., on a Súdrá wife, why has his allotment been declared?

Still, a marriage for the purpose of pleasure, and a marriage for the purpose of religion, (*i.e.*, for the purpose of having sons) being secondary to each other, a son may be born of a married woman of the Súdrá caste by reason of the relation of the purposes through the act (whereby any one of the purposes may be attained); consequently the declaration of his allotment is certainly reasonable, in the same way as the declaration of his caste (*játi*) in the text,—"One born of a Súdrá mother (by a Bráhmin father) is called a *nisháda* or *párasava*."[3] To this effect is the conclusion demonstrated in the Mitákshará on the chapter on Achára (or custom). Hence in the text,—"But for such as are impelled by love of pleasure, the following may, in the order of the castes, be (wives of the twice-born) though not preferable,"[4]—Manu by saying "by love of pleasure" and "not preferable" ordains that the marriage of a wife of the same caste is preferable. Sankha and Likhita say,—"Wives must be espoused, women of the same caste are preferable for all persons: this is the principal rule. The succedaneous mode is: (wives of) four (castes) are allowed to a Bráhmana, in the direct order; (wives of) three (castes), to a Kshatriyá; (wives of) two (castes), to a Vaisyá; (wives of) one (caste), to a Súdrá." By the term "in the direct order", the inferiority of the next in order is indicated.

But Manu has declared two modes of partition among sons of the four classes, thus,—"Let a Bráhmin son take three shares; a son born of a Kshatriyá mother, two shares; a son born of a Vaisyá mother, one share and a half; and a son of a Súdrá mother, one share: or by dividing into ten equal shares, the entire property of all descriptions, let a lawyer allot legal shares in the following manner: a Bráhmin shall get four shares; a son of a Kshatriyá mother, three shares; a son of a Vaisyá mother, two shares; a son of a Súdrá mother, one share."[5]—Of these the latter mode corresponds with what is declared by Yogísvara (para. 1). And these are to be reconciled, as having reference to the sons of the Kshatriyá mothers, &c., according as they are possessed of good qualities or are not possessed of good

[1] Manu, III. 17.
[2] Yájñavalkya, I. 56.
[3] Vasishṭha, XVIII. 9.
[4] Manu, III. 12.
[5] Manu, IX. 151, 152 and 153.

qualities. Hence it is that if the son of a Bráhmin born of a Kshatriyá mother, be the eldest by birth and possessed of good qualities, he gets an equal share with a son of a Bráhmiṇi mother; again, if a son begotten on a Vaisyá mother by a Bráhmin or a Kshatriyá father, be of the same description, he takes an equal share with a son born of a Kshatriyá mother. This is declared by Brihaspati,—"A son begotten on a Kshatriyá mother by a Bráhmin father, if eldest by birth and possessed of good qualities, becomes equal sharer with a son of the Bráhmin class; so likewise a son born of a Vaisyá mother."[1] Likewise Baudháyana says,—"If, between a son born of a wife of the same caste, and a son born of a wife of the caste next in order be possessed of good qualities, he shall take the share of the eldest; for one possessed of good qualities becomes the supporter of the rest."[2] Since it has been generally laid down in this text that a son born of a wife of the caste next in order takes, by reason of his good qualities and seniority, an equal share with a son of the next better class, therefore it is to be observed, though it is not mentioned by Brihaspati, that a son begotten on a Súdrá mother by a Vaisyá father, if of the above character, gets an equal share with a son of the Vaisyá mother. The meaning of the portion,—"shall take of the eldest", is only this,—shall take an equal share with a son of the next better caste, by reason of this being consistent with the text of Brihaspati, and by reason of the impropriety of taking a larger share than that of a son of a superior caste.

When, however, a Bráhmin has only one son born of a Súdrá wife, then he shall get a third part of his property; the remaining two parts shall go to sapiṇḍas, in their default to the sakulyas, and in their default to him who performs the funeral obsequies: as is declared by Devala,—"If a *nisháda* be the only son of a Bráhmin, he gets a third part; a sapiṇḍa, or a sakulya or the giver of the oblations, takes the other two parts,"[3]—"*nisháda*" means a son born of a Súdrá mother by a Bráhmin father.

But if a Súdrá be the only son of a Kshatriyá or a Vaisyá, he gets a moiety, the other half is taken by those entitled to succeed to the property of a sonless man, in the same order. Accordingly, Vishṇu says,—"But when a Súdrá is the only son of the twice-born he gets a moiety; the succession to the other moiety is the same as to the property of a sonless man."[4] By the term "twice-born" here, the Kshatriyás and the Vaisyás only are intended, because Devala has declared a distinct rule with regard to the Bráhmins. "Only son" (*ekaputra*) is a compound of an adjective and a noun.

But this rule (regarding a third and a moiety) has reference to a son by a Südrá wife, having good character and many good

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[1] Brihaspati, XXV. 29.
[2] Baudháyana, II. 2, 3. 12 and 13.
[3] II. Cole. Dig., 320, CLXV.
[4] Vishṇu, XVIII. 32 and 33.

qualities; for else, this would be in conflict with the text of Manu, namely,—"But whether he has or has not sons by other wives, no more than a tenth part shall be given to his son by a Súdrá wife,"[1] —and—"The son of a Bráhmin, a Kshatriyá or a Vaisyá, by a wife of the Súdrá caste, shall not share the inheritance; whatever his father may give him, let that only be his property."[2]

Although this mode of partition is generally laid down, still it refers to property other than land acquired by means of acceptance (of gift); because participation of that by sons begotten by a Kshatriyá or the like wife, is prohibited. So Brihaspati says,—"Land received by acceptance shall never be given to sons by a wife of the Kshatriyá or the like caste; even if their father gives it, the son by a Bráhmini wife may, nevertheless, resume it after the father's death."[3] Here the term "acceptance" being used, it is indicated that of lands acquired by means of purchase, &c., they too shall have shares proper to their caste. Hence it is that, with regard to lands generally, Devala has laid down a separate prohibition levelled against a son by a Súdrá wife. "A son sprung from a Súdrá mother and a twice-born father, is not entitled to a share of land; those born of wives of the same caste shall take the whole of it: this is the settled law".[4]

But as for the text of Manu,—"The son of a Bráhmin, a Kshatriyá, or a Vaisyá, by a wife of the servile class, shall not share the heritage; whatever his father may give him, let that only be his property,"—that has been explained by the southern writers, to apply when there is property given by the father through affection. But the oriental commentators say that it refers to a son by an unmarried Súdrá woman, destitute of good qualities. This is wrong; because it is not proper to discard the distinction mentioned in the latter part,—"whatever his father may give, &c.", and to assume a distinction between having and not having good qualities,—which is not mentioned (in the text); and because the share of a son by an unmarried Súdrá woman will be stated (by Manu) when treating the subject of slaves. Hence the previous distinction only is right.

PART II.

1. In order to show the law of partition among principal and subsidiary sons, their nature is ascertained. On this subject, Yájñavalkya says:—"The legitimate son (*aurasa*) is one born of a lawful wife. Similar to him is the son of an appointed daughter (*putrikásuta*). A son begotten on a wife by a kinsman (*sagotra*) or any other is the wife's son. One secretly begotten in the house is declared the secret-born son. The maiden-born son is one born of an unmarried daughter; and is considered as son of the maternal

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[1] Manu, IX. 154.
[2] *Ibid*, IX. 155.
[3] Brihaspati XXV. 30.
[4] Not found.

grandsire. A son begotten on a woman who has not been deflowered, or on one who has been deflowered, is called the son of twice-married woman. He whom his father or mother gives for adoption is declared to be the son given. The son bought is one who was sold by them. The son made is one adopted by one's self. One who gives himself is self-given. One received while yet in the womb is the son received with a bride. He, who is taken for adoption, having been forsaken by his parents, is the deserted son."[1]

2. It is said in the Mitákshará:—"A woman of equal caste, espoused in a lawful form of marriage, is 'a lawful wife'; one born of her is the legitimate (*aurasa*) son." But in fact it is not to be so understood; for it is contradictory to what (the author of the Mitákshará) himself has said, *viz.*,—"because the *múrddhávasikta* and other mixed castes sprung from superior fathers and inferior mothers, are included under the term 'legitimate sons'"; and since, if the sons born of women espoused in forms of marriage which are not strictly lawful for Bráhmins and others respectively, were not legitimate sons, then notwithstanding such sons, others would take the heritage. Hence the term "of equal caste" is to be held to be used (in the Mitákshará) for the purpose of indicating superiority. But what is mentioned in the text, namely—"One born of a lawful wife", constitutes the definition, which excludes the wife's son.

Accordingly, Manu says:—"He whom a man himself has begotten on his own wedded wife, is the legitimate and the principal son."[2] Vasishṭha also says:—"Only twelve kinds of sons are mentioned by the ancients; the first is the legitimate son begotten by a man himself on his own wedded wife."[3] Also Vishṇu says, "Now there are twelve kinds of sons, the first is the legitimate son, begotten by a man himself on his own wedded wife".[4] Here in both the texts (of Vasishṭha and Vishṇu), the term "wedded" (*Samskritáyám*) is to be considered as an explanatory adjunct of the term "own wife" (*svakshetre*), for otherwise there would be repetition. Devala says:—"He, who is begotten by a man himself on his own wedded wife, is called the legitimate son, is the first in rank and the perpetuator of the father's lineage."[5] Ápastamba says:—"The sons of one who in proper time meets a lawfully wedded wife of the same caste; they have a religious connection and cannot be deprived of the property of the father and the mother."[6] Baudháyana says:—"One who is begotten by a man himself on a wedded woman of the same caste is known as the legitimate son. Also it is declared (by the ancient sages):—You are born from every limb, you are sprung from the heart, you are one's self in the name of son, you, who are such, live for hundred years; the ancestors put on a garland of lotus, (in joy) when you were in the womb; just as a person himself is in this world,

[1] Yájñavalkya, II. 128—132.
[2] Manu, IX. 166.
[3] Vasishṭha, XVII. 12 and 13.
[4] Vishnu, XV. 1 and 2.
[5] II. Cole. Dig., 334, CXCV.
[6] Ápastamba, II. 6, 13, 1.

so you become born here (a part of him); a man himself is called by the name of *put-tra* on account of the benefits conferred upon the father and the mother; because you deliver from the lower regions called *put*, therefore you are named *put-tra*."[1]

In the texts of Ápastamba and Baudháyana, the term, "of the same caste", is used with the intention of indicating superiority. Hence the mention of the mode of partition among the sons too, who are begotten on wives of dissimilar caste, while dealing with legitimate sons, becomes consistent. The text of Ápastamba is read in the Ratnákara as—"of the same caste, who had no previous (husband)"—and is explained thus: "who had no previous (*apúrvám*), *i.e.*, who had no previous husband; the meaning is—one who was not even affianced to another; this is said by the author of the Prakása." In the Párijáta also it is said:—The term, "of the same caste", here means that a woman of any twice-born class, is of the same class with a man of any twice-born class; and that a Súdrá woman is of the same class with a Súdrá.

It does not, however, imply that a Bráhmiṇí woman is equal in class to a Bráhmin; a Kshatriyá to a Kshatriyá and a Vaisyá to a Vaisyá: for if that were so, then the sons of Kshatriyá or other women espoused by a Bráhmin or any other (of a superior class) would not be included under any of the twelve kinds of sons.

3. "The son of an appointed daughter (*putrikasuta*) is similar to him," (*i.e.*, the legitimate son). The same is described by Vasishṭha,—"This damsel who has no brother, I will give unto thee, decked with ornaments: the son that may be born of her shall be my son."[2] Also Manu says,—"He who has no son may appoint his daughter in this form to raise up issue for him: whatever child may be born of her shall perform my obsequies. In this very mode Daksha himself, a creator of beings, appointed daughters for the purpose of multiplying his race. He, with a delighted heart, gave ten daughters to Dharma, thirteen to Kasyapa, and twenty-seven to the king Soma (moon) having received them with honor."[3] Here it is laid down that a son, born of a daughter who is given in marriage with the express declaration of appointment, becomes the *putrika-putra* of his maternal grandfather. That a son born of a daughter who is given in marriage without such express declaration, may be the *putrika-putra*—is determined in the following passage of the Mitákshará in the chapter on Áchára:—"The epithet 'having brother' has been used to prevent the apprehension of the bride's appointment; by this it appears that a daughter may be appointed, though not declared to be so." Accordingly, also Gautama says:—"The sonless father shall give away the appointed daughter in marriage with the express agreement that the issue shall be mine. Some say that (even in the absence of any express agreement) a daughter becomes appointed by the mere intention of the father."[4]

[1] Baudháyana, II. 2, 3, 14.
[2] Vasishṭha, XVII. 17.
[3] Manu, IX. 127—129.
[4] Gautama, XXVIII. 18 and 19.

It is said also in the Bráhmapuráṇa:—"A daughter who has been appointed to raise issue by her sonless father, whether mentally or in the presence of the king, fire and kinsmen, or anywhere else, previously to conception, even if she has received fees (from the bridegroom) and is given to the bridegroom whether by the father (himself) or (by any other) when the father is dead,—is known as the appointed daughter. Such a daughter gets an equal share from the father's property."[1] Manu says:—"A son of the appointed daughter shall offer the first oblation to his mother, the second to her father, and the third to the father's father."[2]

Or the (compound) term *putrika-suta* (in Yájñavalkya's text, § 1) may mean the appointed daughter as well as son, *i.e.*, the appointed daughter herself is the substitute of a son. Our opinion is that although she is (like a son) sprung from the breast (*uras*), still being a daughter she is similar to (and not the same as) a legitimate aurasa son. But the author of the Mitákshará says:—"She is declared to be similar to a legitimate son because (in a female child) there are more of the mother's limbs than of the father's limbs." So Vasishṭha says:—"The appointed daughter herself is the second son."[3]

4. The Dvyámushyáyana or the son of two fathers is as described by Yájñavalkya in the following text:—"A son begotten by one who is without male issue, on the soil of another, under an appointment, becomes legally the heir and the giver of oblations to both."[4] Although he is sprung from the breast (or aurasa son) of the owner of the seed, still being begotten on another's wife, he is certainly inferior to the aurasa or legitimate son. Hence it is that the sage himself has given the following definition of the aurasa or legitimate son:—"The aurasa or legitimate son is one born of a lawful wife," (§ 1). And we also will explain the Dvyámushyáyana as falling under the description of the wife's son, since the distinctive feature of the wife's son is not wanting in him.

Also Manu says:—"When by a contract of work, the soil is given in consideration of the seed: the owner of the soil and the owner of the seed are found in the world to be sharers of that."[5]—Just as in the world by a contract for cultivation—when one has land but has no seed such as paddy for sowing, and another has seed, but no land; and if they enter into a contract, *i.e.*, an agreement, that mine is the seed and yours the land, let us cultivate by sowing that in this, and let the produce grown therein be ours, then it is observed that both become sharers of the crops thereof. Similarly, also, in the case of the Dvyámushyáyana or the son of two fathers, if one sows his (virile) seed in the soil of another, by an agreement that let the son begotten on the soil be ours,—then

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[1] II. Cole. Dig., 356.
[2] Manu, IX. 132.
[3] Not found in Vasishṭha.
[4] Yájñavalkya, II. 127.
[5] Manu, IX. 53.

the issue begotten thereon belongs to both. Such a son of the wife, belonging to two fathers is called the Dvyámushyáyana.

Yájñavalkya, in defining the Dvyámushyáyana, (para. 1) has said "begotten under appointment", therefore what is intended is that the husband's younger brother or any other *sapiṇḍa* can, only when appointed by her venerable protector, beget a son on the wife of a brother and the like, in the prescribed mode such as rubbing the body with clarified butter; otherwise sin would be incurred by both. Accordingly Manu says:—"The husband's younger brother, or a sapiṇḍa or a sagotra, being appointed by the venerable protector, and rubbing his body with clarified butter, shall, with the desire of begetting a son, have an interview with a sonless woman after catarmenia: one born in this mode becomes the son of the wife of a person."[1]

When, however, without the agreement that the produce is to belong to both, seed is sown in the soil of another by the husband's younger brother or the like, then that son belongs to the owner of the soil alone. This also is declared by Manu,—"Should there be no agreement that the produce is to belong to the owner of the soil as well as to the owner of the seed, then clearly the fruit belongs to the owner of the soil, for the soil is more important than the seed."[2] Where without the agreement about the produce which is here the offspring, a child is begotten on the soil of another, that belongs to the owner of the soil alone. The meaning of the term "clearly" is that as in the world, if seed be sown in the land of another without any agreement with him, or if an elephant, a horse or the like belonging to one person causes a female of the same species belonging to another person to conceive, then in both cases the fruit produced therein is seen to belong to the owner of the soil alone: and the reason for this is stated in the passage, "for the soil is more important than the seed"; the purport is that this is found in the case of cows, mares, &c. Accordingly the meaning which follows is, that if there be an agreement, then only the wife's son becomes the son of two fathers or Dvyámushyáyana, by reason of the right of the owner of the seed; but the owner of the soil has right over the wife's son in both the cases, (*i.e.*, whether there be an agreement or not). Hence it is that although Yájñavalkya has made no mention of the agreement with the owner of the seed, in the text,—"A son begotten by one without male issue, &c.,"—still that is to be understood since the text is based upon the same foundation with that of Manu. Accordingly, in the text,—"A son begotten on a wife by a kinsman (sagotra) or any other,"—a comprehensive definition of the wife's son is given, irrespective of the agreement; otherwise there would have been repetition: "a kinsman (sagotra)" means, the husband's younger brother or a sapiṇḍa or the like: "any other", signifies one other

[1] Manu, IX. 59 and 60. [2] Manu, IX. 52.

than a sagotra; this is the secondary alternative, for Manu says,—"or a sapiṇḍa or a sagotra".

The Ácháryas say that appointment to raise issue is relative to an affianced woman only. Because raising up issue in pursuance of appointment is restricted by Manu to her case only, as in the text,—"When the husband dies after the verbal betrothal of a damsel, her husband's younger brother shall have intercourse with her in this mode."[1] And because the appointment of a widow is rather prohibited; since after setting forth the appointment of a widow in the text,—"On failure of issue, the desired offspring may be obtained by a woman duly authorized, from the husband's younger brother or a sapiṇḍa: but one who is appointed to raise issue on a widow, shall, rubbing his body with clarified butter, and being silent, beget in night only one son and by no means a second,"[2]—Manu himself forbids it in the following text,—"No widow should be authorized by regenerate men to beget children by other persons, for those that authorise her to conceive by other men, violate the primeval law: such appointment is nowhere mentioned in the Vedic texts on marriage; neither is the re-marriage of widows mentioned in the law of marriage: this practice, fit only for brutes, and reprehended by learned regenerate men was introduced among men while Veṇa held the sovereign sway: he ruling the whole earth, and eminent among the royal saints, gave rise to confusion of castes, while his intellect was perverted by passion: since his time, the virtuous censure him who through delusion of mind authorizes a widow to have intercourse with another man for the sake of progeny."[3]

Here it is to be remarked that the term "affianced" means a damsel who has been given in marriage by the person having the right to give, with the declaratory sentence,—"I give unto thee;" and that the term "widow" signifies one who has been married with the connubial ceremony ending in the rite of going seven steps, but whose husband is subsequently dead. But the term "affianced" does not include one who has been betrothed by a promise at an indefinite time before marriage, such as with the following declaratory sentence,—"I will give this damsel in marriage, in the presence of gods, the spiritual preceptor and the holy fire, to him (or thee) who is (or art) not destitute of any limb, or not impotent, not degraded and free from the ten defects." Hence it is that the term "husband" has been used by Manu; the previous executory promise being no part of the marriage ceremony, the promisee's status of husband does not arise thereby, consequently he cannot reasonably be referred to by the term "husband". Although a person does not become the husband of even a damsel betrothed by a promise, inasmuch as like the status of wife, the status of husband, which consists in the sacred initiation and which

[1] Manu, IX. 69. [2] Manu, IX. 59. [3] Manu, IX. 64—68.

is to be effected by the ceremony of marriage, can never arise before its completion; still in the commencement of the connubial ceremony the use of the term "husband", the status whereof will be the effect of it, is not unreasonable, like the use of the word sacrificial fire before the commencement of the sacrifice by the sacrificer. Hence it is that among western, northern and the like people, if the promisee dies a little before the marriage of the betrothed damsel, her marriage with another person is allowed by the learned, who are not censured. Otherwise in the *kali* age when the appointment to raise issue is prohibited, if the re-marriage of those whose marriage is not consummated be also forbidden, it would be a very objectionable practice. Accordingly, the meaning (of the text of Manu) is this,—When "the husband", *i.e.*, person about whom the ceremony of marriage takes place whereby the status of the husband is effected, "dies after the verbal betrothal", *i.e.*, after the gift has been made with the declaratory sentence. Nor can it be said that let the appointment of widows to raise issue be optional, inasmuch as it is prohibited after having been enjoined. Because option cannot reasonbly be supposed with reference to a fact, for it is not reasonable to say that a person undertaking to procreate issue on a widow, under appointment, does or dees not incur sin. And because the law of appointment to raise issue cannot apply to widows, as it is restricted to affianced damsels, by the text,—"When the husband, &c." And because the injunction and the prohibition are not of equal force, inasmuch as those who give the authority are censured, as in speaking of the duties of women, unchastity has been declared to be the source of numerous faults, and as a life of austerity (led by the widows) has been highly praised. Accordingly, in the text,—"Let her rather emaciate her body by (living upon) the pure flowers, roots and fruits; but let her not when the husband is dead, pronounce even the name of another man."[1]—Manu himself has prohibited the resorting to the protection of another man, for livelihood; and in the text,—"Longing for the unparalleled virtue of those having only one husband, shall continue till death, forgiving all injuries, observing strictly the rules and foregoing all sensual pleasure: many thousands of bachelor Vipras continuing in the order of the student have ascended the celestial regions without leaving any issue: like those life-long students, a chaste woman leading a life of austerities after the death of her husband goes to heaven though destitute of sons: a woman who being covetous for offspring proves faithless to her (deceased) husband, brings disgrace on herself in this world, and becomes excluded from the regions of her lord (in the next world,)"[2]—he has forbidden with extreme censure the living with another man for progeny; and subsequently in the text,—"When the husband dies, &c.",—he himself has declared the legality of appointment relative to an affianced damsel. Having mentioned, "in this mode", he has declared other ceremonies, in

[1] Manu, V. 157.

[2] Manu, V. 158—161.

the text,—"Having espoused her in due form, she being clad in a white robe, and pure in her conduct, let him privately approach her once after each course till delivery."[1] The pronoun "this" in the passage "in this mode" means the mode which has been mentioned before, *viz.*, rubbing of the body with clarified butter, appointment by the venerable protector, &c.,—and includes what is stated in other Smritis. The term "husband's younger brother" includes a sapiṇḍa and the like, in conformity with other texts. The term "husband" and the expression "after the verbal betrothal" have been already explained.

The following passage of the Mitákshará, namely,—"From this very text it appears that the person to whom the damsel is betrothed becomes her husband even without acceptance," must be taken as implying the meaning explained by us, since it has been shewn that the meaning which appears on the face of the passage, is erroneous. Accordingly there is the following passage further down,—"This espousal with the restrictions, uamely, sprinkling the body with clarified butter, &c., forms part of the intercourse to be had with the woman appointed to raise issue; but it does not secure for her the status of a wife of the husband's younger brother. Hence the offspring begotten on her belongs to the owner of the soil, should there be no agreement; but if there be an agreement, it appertains to both by virtue of the agreement itself."

Nárada says:—"The issue of the seed sown in another's soil by the owner's permission is considered as belonging to both the owner of the seed and the owner of the soil."[2] Sankha and Likhita say:—"According to Angiras, the offspring belongs to him who espoused her with Vedic texts: but Usanás holds that the produce of the seed sown with an agreement between the owner of the seed and the owner of the soil belongs to both."[3] Kátyáyana ordains:—"When one raises produce with the consent of the owner of the soil, then both of them become here the sharers of the same, since the fruit could not come into existence in the absence of either."[4]

Hárita says—"(If begotten) in the lifetime (of the husband) he is called the wife's son, by reason of the absence of independence; but after the death, he is called the son of two fathers, by reason of the seed not being sown (by the husband): others say that soil bears not fruit without seed, nor does seed germinate without soil, hence both being necessary, the offspring belongs to both. Of these two fathers, he becomes first the offspring of the natural father. Let them offer two pindas in the (*nirvápa*) sacrifice in honor of the ancestors, or in one pinda declare the name of both (the fathers); let his son do the same when offering the second pinda, and his grandson when offering the third pinda. And let

[1] Manu, IX. 70.
[2] Nárada XII. 58.
[3] II. Cole. Dig., 363, CCXL.
[4] *Ibid.* 366, CCXLV.

the remote descendants down to the seventh, pronounce the name of two while offering *lepa* or divided oblations to the three ancestors entitled to the *lepa* or divided oblations."[1]

The meaning of this text is:—If begotten "in the lifetime", *i.e.*, of the owner of tho soil, he is, by some, called the wife's son, who belongs to the owner of the soil alone; the reason for this is,—"by reason of the absence of independence", *i.e.*, of the wife: "but after the death", *i.e.*, of the owner of the soil; although the absence of independence is the same, by reason of the subsequently cited text of Manu, *viz.*,—"A sonless woman keeping unsullied, &c.;"—still the son does not belong to the owner of the soil alone; and the reason for this is, "by reason of the seed being not sown", *i.e.*, the owner of the soil must have given permission to the owner of the seed; "soil bears not fruit, &c.", shows that what has been said is reasonable: "in the *nirvápa*", which means that in which oblations are given, *i.e.*, the sacrifice in honor of ancestors; there let the Dvyámushyáyanas "offer" separately "two pindas" to two fathers, "or in one pinda, declare the name of both" the fathers; it is to be understood that in each of the pindas the names of two ancestors are to be declared; for Apastamba ordains,—"If he be the son of two fathers, he shall offer each oblation to two ancestors,"[2] *i.e.*, by reason of the three ancestors being double; "the second", *i.e.*, in offering the second and the third oblations: "the three ancestors entitled to the *lepa*", while offering divided oblations to them shall pronounce the names of two.

Also Nárada says:—"The sons of two fathers shall separately offer to two (sets of ancestors) pinda and libations of water; and shall likewise take a moiety of the property of the owner of the seed and of the owner of the soil."[3]—The term "moiety" indicates a share that is reasonable under the circumstances.

Baudháyana says:—"The son of two fathers shall offer oblations (in this way); shall proclaim the names of both in each oblation; three oblations shall be offered to the six: he who does so, errs not."[4]—"The six" means the two fathers, the two grandfathers and the two great-grandfathers. He again says:—"The son begotten on the wife of a person deceased or impotent or diseased, by one duly authorized, is the wife's son: he is the son of two fathers, belongs to two gotras, performs the funeral obsequies of both and takes their heritage."[5]

Manu says:—"He who is begotten on the duly appointed wife of a man deceased or impotent or diseased is called the son of the wife."[6]

Here in all cases where the owner of the soil is alive, but is incapable of begetting a son on account of disease, &c., the

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[1] II. Cole. Dig., 863, CCXLI.
[2] Not found.
[3] Nárada, XIII. 23.
[4] Baudháyana, II. 2, 3 and 19.
[5] *Ibid*, II. 2, 3, 17 and 18.
[6] Manu, IX. 167.

appointment and the agreement may, according to the circumstances, be made by the venerable protectors and the husband also; but if he be dead, then by the venerable protectors alone.

Thus there are two descriptions of the kshetraja or wife's son: one has two fathers, and the other has the owner of the soil for his father.

5. "One secretly begotten in the house" by a gallant, and subsequently ascertained to be of the same class, is the secret-born son of the owner of the soil. Thus Manu says:—"When a son is begotten on one's wife, and it is not known who is his father, he is the secret-born in the house and belongs to him from whose soil he is sprung."[1]—"And is not known, &c.", means, that although it is not known by what particular person he is procreated, still it must be held that it is known that he is begotten by a person of equal class, by reason of the following text of Yogíśvara, "This law is propounded by me in regard to sons equal by class."[2] This text will be explained hereafter.

6. "The maiden-born son is one born of an unmarried daughter", begotten by a man of equal class, he "is considered as a son of the maternal grandsire": that is, the son belongs to him, of whose daughter he is born. But one born of a married daughter becomes the secret-born son of the husband; as is said by Manu,—"When a maiden daughter secretly conceives a son in her father's house, that son sprung from the maiden daughter is called by the name of the maiden-born son and belongs to the husband."[3] From these texts it appears that one begotten on an unmarried damsel residing at her father's house, by a gallant of equal class, is called a maiden-born son, and that he becomes the son of the maternal grandfather.

But in conflict with this is the following passage of the Bráhmapuráṇa cited in the Kalpataru:—"But one begotten in the father's house, on a damsel who has not been given (in marriage) by a man of equal class is called the maiden-born son and becomes the son of him to whom she is given (in marriage);" also the following text of Nárada cited in the same book.—"The maiden-born son, also the son received with the bride, and he who is secretly born: their mother's husband is to be known as their father; and they are pronounced to be heirs."[4] Here (*i.e.*, in the passage of the Bráhmapuráṇa) there is no conflict as to his being the maiden-born son, who is begotten on an unmarried damsel in her father's house, by a man of equal class: but the conflict lies in the portion,—"and becomes the son of him to whom she is given in marriage"; also in what has been declared in the above text of Nárada, namely,—that the damsel's husband becomes the father of the maiden-born son, of the son received with a bride, and of

[1] Manu, IX. 170.
[2] Yájñavalkya, II. 133.
[3] Manu, IX. 176.
[4] Nárada, XIII. 17.

him who is secretly born; and in what Manu says, namely,—"and belongs to the husband": since it is not said (in these texts) that he becomes a son of the maternal grandsire. As for the reconciliation made by the author of the Mitákshará, namely,—"if begotten on a maiden daughter, he becomes the son of the maternal grandfather, and of the husband alone, if begotten on a married daughter",—that is not satisfactory. For if that were so, then such a son could not be called a maiden-born son (*kánína*) being not begotten on an unmarried daughter, meant by the term "maiden" or *kanyá*. It cannot, however, be said that the term *kanyá* (maiden daughter) refers to any female child (whether married or unmarried). Since the definition (of the maiden-born son) would be unmeaning, inasmuch as it would not exclude the secret-born son, who is begotten by a daughter,—all women being daughters of somebody. Again, the conflict with the passage of the Bráhmapurána is not got rid of (by this), for there the term—"who has not been given in marriage"—has been used. Accordingly, also, it is difficult to reconcile the inconsistency with the text of Manu. The author of the Kalpataru, however, who has cited the texts contradictory to each other, has not at all reconciled the conflict, for like a thoughtless man he makes no mention of the distinct cases to which the texts are applicable. Indeed, he having set forth many texts showing that the maiden-born son belongs to the maternal grandfather, has immediately cited the text of Nárada and the passage of the Bráhmapurána, which are in conflict with the above texts. There are cited the following text of Vasishṭha, —"The maiden-born son is the fifth; he whom an unmarried damsel begets through passion in her father's house, is the maiden-born son, he becoms the maternal grandfather's son: this is also declared (by the ancient sages),—'If a sonless daughter begets a son in the house; in him the maternal grandfather has a son's son, he shall offer pinda and take the property.'"[1]—Likewise the following text of Nárada:—"The maiden-born son, whose father is unknown, and whose mother was senseless, shall offer pinda to the maternal grandfather and take his property"[2]—and also the following text of Baudháyana:—"If one approaches a damsel who has not been espoused and who has not been given; the son begotten on her is the maiden-born son."[3]

We remove the difficulty thus: The texts which declare that the maiden-born son belongs to the maternal grandfather, are relative to a son begotten by a man of equal class on a damsel who has not in any way been given: and the texts which declare that such a son belongs to the husband, have reference to the son begotten by a man of equal class on a damsel who has been declared to be given but who has not acquired the status of wife, which is effected by the marriage ceremony ending in the right of going seven steps. The term, "who has not been given", in the text of Nárada (in the

[1] Vasishṭha, XVII. 21, 22 and 23. [2] Nárada, XIII. 18.
[3] Baudháyana, II. 2, 3—24.

passage of the Bráhmapuráṇa ?), and the term "who has not been given", in the text of Baudháyana mean, the ceremony of whose marriage has not been completed,—but they do not signify, who has not at all been given. And this is consistent with reason. By the declaration of the intention to give the damsel (in marriage), the destruction of the father's right and the generation of the bridegroom's right are commenced; and the father's right not being wholly destroyed (just after the declaration of the intention) the term "maiden-born son" may reasonably be applied, and there being the commencement of the bridegroom's right, the son may reasonably belong to him; but it is consistent with reason that when the father's right is complete (over the damsel), the son born of her becomes the son of the maternal grandfather. The same is also the meaning of the text of Manu (para. 1):—A damsel, who has been declared to be given, but whose marriage ceremony has not been completed, continues a maiden, because the status of the intended bridegroom's wife has not been acquired; a son sprung from such a maiden daughter is called by the name of the maiden-born son and belongs to the husband, *i.e.*, to the person by whom she is married: hence the phrase "in her father's house" is consistent as supporting this meaning, for immediately after the marriage she enters the husband's house. The passage of the Mitákshará also (on this subject) bears the same meaning: "unmarried", *i.e.*, whose marriage ceremony is not commenced, "married", *i.e.*, whose marriage ceremony has commenced;—the past participle in the word "married" (*údhá*) is used in the sense that the act is commenced, but not in the sense that the act is completed. But if the marriage ceremony of a damsel has been completed, then a son procreated on her by a gallant of equal class, becomes the secret-born son: hence it is said,—"one begotten secretly in the house", *i.e.*, born in the husband's house without his knowledge.

7. Twice-married women are of two descriptions: the first is one who was not deflowered on her first marriage, and is espoused by another; and the second is one who has, previously to the marriage, been polluted by intercourse with the other sex. One born of such a woman is the son of a twice-married woman; hence it is declared (by Yájñavalkya, § 1),—"begotten on a woman who has not been deflowered or on one who has been deflowered". Manu says:—"If a woman who has been deserted by the husband or a widow begets (a son) by becoming, of their own accord, the wife of another person; he is called the son of a twice-married woman."[1] Kátyáyana says:—"When a woman having deserted a husband who is impotent or degraded, gets another husband; a son born of her is the son of the twice-married woman, and it is clear that he belongs to his natural father."[2] Vasishṭha and Vishnu say:—"The fourth is the son of the twice-married woman."[3] His being the fourth is agreeably to the order stated by them.

[1] Manu, IX. 175.

[2] II. Cole. Dig., 383, CCLXVIII.

[3] Vasishṭha, XVII. 18; Vishṇu, XV. 7.

8. He, whom the mother with her husband's assent or the father gives to another, becomes his adopted son; thus Manu says:—"That son whom his mother or father affectionately gives with water, at a time of distress, and who is alike (by class) is known as the adopted son."[1] By specifying "at a time of distress", it is indicated that the giver incurs sin in the absence of distress; the mother and the father (may give) separately or jointly; the term "with water", indicates the mode of gift and acceptance; "alike" means equal in class; "affectionately" (*priti-samyuktam*) is an adverb.

An only son shall neither be given nor accepted. So Vasishtha ordains:—"A person, produced from the virile seed and the uterine blood, is an effect whereof the mother and the father are the cause: the mother and the father are competent to give, to sell, or to abandon him. But let no one give or accept an only son, since he is to continue the line of the ancestors. Let not a woman, however, give or accept a son unless with the assent of her husband."[2]

Some say that the adoption of a son by a woman without the assent of her husband being prohibited in this text, the son taken by a widow whose husband died without giving authority does not become an adopted son. This is not tenable; since a sonless person has no access to heaven, and the procreation of a son is ordained to be necessary, therefore the permission which he was bound under the Sastras to give, is not to be considered as wanting in such a case. Nor can it be said that thus the portion, namely, "unless with the assent of her husband"—would be useless, inasmuch as there is no case to be excluded, and as the authority which a person is bound under the Sastras to give, is in all cases necessary (and so assumed as given). Because the prohibition is levelled against a woman who wishes to adopt a son for her own sake, when her husband who is desirous of having *moksha* or freedom from the necessity of repeated deaths and births, or who has a son by another wife, cannot possibly give an authority to adopt. So it is declared:—"If one among all the wives of the same person be mother of a son, then all of them become by that son, mothers of male issue; this is ordained by Manu."[3] The purpose for which a son is desired, namely, the performance of sráddha, &c., being served by the son of a co-wife, no son need be adopted by such a woman without the assent of her husband. The purport is, that in such a case, the object of both (the husband and the wife) is accomplished by that son; since he, being the aurasa, is the principal son to the husband, while to the wife he is a subsidiary son, like an adopted son; hence another son shall not be taken in adoption without the permission of the husband. But in reality the meaning of the part, —"unless with the assent of her husband",—is, that while the husband is alive, a son shall not be adopted by the wife without the permission of the husband; because the following text:—"If among

[1] Manu, IX. 168. [2] Vasishtha, XV. 1—5.
[3] Manu, IX. 183.

uterine brothers, one becomes father of a son, then all of them become by that son, fathers of male issue: this has been declared by Manu"[1] —which is similar to the previous text,—(If one among all the wives, &c.),—has been explained in the Mitákshará and the Smritichandriká to mean that when a brother's son is available for making a subsidiary son, such as an adopted son, any other shall not be made a substitutionary son.

But when the husband is dead, the assent of those only is necessary, on whom she is dependent. In this view, the object of the prohibition becomes reasonable. Therefore, although the husband be deceased without giving permission to adopt, still an adoption by the widow is not invalid. The reason also for putting the interpretation mentioned above on the two texts of Manu—has been set forth in the Mitákshará itself, thus:—"Otherwise in the texts, namely,—'The wife and the daughters also, &c.'—and—'The property of a woman without issue, &c.'—which refer to the heirs who take the property of one destitute of issue,—the declaration of the succession of the brother's son and the step-son respectively, in default of the wife, &c., and in default of the husband, &c., would be in conflict with the above texts." This will be dealt with in detail while explaining the texts.

Although there may be many sons, still the eldest shall not be given in adoption; for in the text,—"As soon as the eldest is born, a man becomes father of a son"[2]—he is declared to be preferable in performing the duties of a son.

The reason being equal, the prohibition in respect of an only son and the eldest son, applies to the cases of the son bought, the son self-given, and the son made. Hence in the anecdote of Harischandra in the Bahvricha Bráhmana, there is found a suggestion of the prohibition in respect of the eldest son in the case of the son bought:—"He, on taking the eldest son, said"—

The mode accepting a son is propounded by Vasishtha,—"A person being about to adopt a son shall take an unremote kinsman, or a near relation of a kinsman, having convened his kindred and announced his intention to the king, having performed the *homa* with recitation of the hymns denominated *vyáhriti* in the middle of the dwelling-house."[3] Here by the term "unremote kinsman" is intended, the exclusion of one who is remote by country and language. Similarly, in the cases of the son bought and the like, for the reason is the same. In the Kalpataru, however, the text is read as—*adúrabándhavam asannikrishṭam eva*, and is explained thus: *adúrabándhavam*, (rendered above into an unremote kinsman), means, one whose maternal uncle, &c., are near: *asannikrishṭam*, means, one whose virtues and defects are unknown; *eva* means even. And he has written the following as the remaining

[1] Manu, IX. 182. [2] Manu, IX. 106.
[3] Vasishtha, XV. 6.

portion of the text of Vasishṭha:—"But if a doubt arise, let him set apart like a Súdrá one whose kindred are remote, for it is declared (in the Vedas), 'many are saved by one',"[1]—and explained thus: 'But if a doubt arise', *i.e.*, should a doubt with respect to his caste arise, on account of his kinsmen not being near, 'let him set him apart like a Súdrá' destitute of initiation: the intention is that even a Súdrá may be a a son adopted.

9. "A son bought is one who was sold by them,"—"by them", *i.e.*, by the mother and father: that is, one given to another by the mother with the husband's assent, or by the father, on receipt of price; 'excepting an only son and the eldest son, at a time of distress',—is also to be inserted (in the definition); he must be one of the same caste, by reason of the concluding text,—"This law is propounded by me in regard to sons equal in caste." As for the text of Manu:—"He, who is purchased from the mother and the father to become a son, is the purchaser's son bought, whether similar or dissimilar,"[2]—that is interpreted,—"whether similar or dissimilar" in good qualities, but not dissimilar in class, for there would be conflict with the text,—"This law is propounded, &c.," is taken for progeny, is the son bought.

10. A son made is one of an equal class, "who" having been induced by the show of money, field, &c., is asked—'be you my son', and "is adopted by the man himself" who is desirous of having male issue; provided that he is destitute of mother and father, for if they be alive, he cannot, by reason of his dependence on them, become another's son. Also Manu and Vishṇu say:—"When one alike (in class), capable of discriminating between right and wrong and possessed of the virtues of a son, is adopted, he is to be known as the son made;"[3]—"alike", *i.e.*, alike in caste, "is adopted" by the mother and the father jointly or separately.

11. "One who gives himself is self-given," *i.e.*, one who has given himself to another, *i.e.*, one who comes of his own accord by saying, 'I will become your son', and is bereft of the mother and father, or is abandoned by them, is equal in class and is not degraded,—is called a self-given son. So Manu says:—"He, who being bereft of the mother and the father or abandoned (by them) without any cause, delivers himself to another, is pronounced his self-given son;"[4]—"abandoned", *i.e.*, by the mother and the father, at a time of famine or the like, on account of inability to afford maintenance, &c., "without any cause" such as degradation,—that is to say, independent (so that he can give himself).

12. "One received, while yet in the womb, is a son received with a bride," *i.e.*, one, who is in the unmarried state of a damsel, and is received or *vinna*,—*vinna* being the past participle of '*vid*',—to get,—when she is married in the pregnant state,—is called one

[1] Vasishṭha XV. 7 and 8.
[2] Manu, IX. 174.
[3] Manu, IX. 169.
[4] *Ibid*, IX. 177.

received with a bride, and becomes the husband's son. So Manu says:—"When a pregnant damsel is espoused, whether known or not known (to be so), the child in the womb belongs to the husband and is called the son received with a bride."[1] Also Vishṇu says,—"The seventh is the son received with a bride; he is the son of a damsel married when pregnant, and belongs to the husband."[2] "The seventh," *i.e.*, with reference to the order in which the enumeration is made by the sage.

13. "He, who is taken for adoption, having been forsaken (by the parents), is a deserted son," *i.e.*, one who is abandoned by the mother and the father, and is taken by a person desirous of having male issue,—becomes son of the taker, and is called a deserted son. These two must be alike in caste. Likewise, Vishṇu also says,—"The eleventh is the deserted son, belonging to him by whom he is taken, having been forsaken by the father and the mother."[3] Vasishṭha:—"The fifth is the deserted son, who is taken, having been forsaken by the mother and the father."[4] "The eleventh" and "the fifth" place is agreeably to the order in which enumeration is made by the two sages respectively.

14. The son of a Súdrá woman, however, who is called *párasava*, and is enumerated by Manu among the subsidiary sons, is not mentioned by Yájñavalkya, inasmuch as the sage lays down a restrictive rule in the shape of the conclusion contained in the text,—"This law is propounded by me in respect of sons equal in class,"—and as he can, by no means, be considered as equal in class. Hence, the sage speaks of such a son in the text,—"One begotten even on a female slave," &c., &c., (§ 22, since a son of a twice-born man by a Súdrá woman, cannot succeed to his paternal property even in default of other sons. This will be adverted to later on. Likewise, Manu says,—"The son whom a Bráhmin impelled by passion begets on a woman of the Súdrá class, is a corpse though living and therefore called a *párasava*, (a living corpse)."[5] Also Baudháyana says,—"A *párasava* is one begotten on a woman of the Súdrá class by a person belonging to the first of the regenerate classes impelled by passion."[6]

15. Of those (twelve descriptions of sons), those described after the *aurasa* or legitimate son are subsidiary sons, but the *aurasa* alone is the principal one. Accordingly Manu says,—"These eleven (kinds of sons), beginning with the wife's son, as have been described above, are declared by the wise substitutes of sons—for failure of the object."[7] The term "for failure of the object," *i.e.*, for failure of the object of marriage, &c., forms the reason for substitution. But in the Smritichandriká it has been explained thus,—The wise, *i.e.*, the sages apprehending, in default

[1] Manu, IX, 173.
[2] Vishṇu, XV. 15, 16 and 17.
[3] *Ibid*, XV. 24, 25 and 26.
[4] Vasishṭha, XVII. 36 and 37.
[5] Manu, IX. 178.
[6] Baudháyana, II. 2, 3—30.
[7] Manu, IX. 180.

of the legitimate son, the failure of the ceremonies of the sráddha and the like that might be performed by him, have declared the necessity of securing any of the eleven substitutionary sons. Brihaspati says,—"There are thirteen kinds of sons, that are described by Manu in the order of priority; of them the legitimate son perpetuates the lineage, the appointed daughter and the rest,"[1]—this text has been explained by adding,—'are declared as what should be made subsidiary sons'. Brihaspati declares,—"As in the absence of clarified butter, the linseed oil is declared by the virtuous as the substitute, so are the eleven descriptions of sons, in the absence of the legitimate son and the appointed daughter."[2] In the Bráhma-purána (it is said):—"The son given, the son self-given, the son made, as well as the son purchased, and the deserted son are always to be maintained: those that belong to a different *gótra* or family, present distinct oblations, and perpetuate a different lineage, become impure for three days on the occasions of birth and death, as well of those that give food and raiment as of those to whom the seed and the soil belong. The Bráhmins have rarely a *párasava*, so of the Súdrá class. But that is, labouring under a curse, and is gradually perishing, and is always engaged in warfare, have sometimes these; if there be neither the legitimate son nor the appointed daughter, then they have eleven sons of different descriptions beginning with the wife's son, who, however, merely perpetuate the lineage; all of them perform like a slave, their sráddha, &c., on the specified occasions. The secret-born son, the maiden-born son, the son received with a pregnant bride, the wife's son and the son of the twice-married woman, these five, the wealthy Vaisyás may not have even for fear of punishment from the king; they may have all the rest. The Súdrás whose occupation is service, who depend upon others for livelihood, and whose person is under the control of others, can have no son anywhere; therefore of a male slave and a female slave, none but a slave can spring."[3]

16. Having thus determined the nature of these sons, their right to heritage is now determined. On this Yogísvara says,—"In default of the preceding one among these, every succeeding one is the giver of the pinda and the taker of the heritage."[4] Inasmuch as a distributive sense is indicated by the term "every succeeding one", the term "the preceding one", also, is to be taken in a distributive sense.

17. When there are a legitimate son and the son of an appointed daughter, then agreeably to the above text it would follow that the son of the appointed daughter is not entitled to the heritage while there is the legitimate son, but Manu propounds an exception (to the above rule,) in the text,—"A daughter having been appointed, if a son be afterwards born, the division of heritage must in that case be equal; since a woman has no right to specific deductions for

[1] Brihaspati, XXV. 33.
[2] *Ibid*, XXV. 34.
[3] II. Cole. Dig., 404, CCLXXVII, and 414, CCXCIV—VII.
[4] Yájñavalkya, II. 136.

seniority."[1] Also Brihaspati says,—"The legitimate son alone is pronounced to be the owner of the paternal property; an appointed daughter is declared to be equal to him; the other sons, however, are to be maintained."[2] Nor is it resonable to say that if the son of the appointed daughter be born first—(in point of time) and subsequently the legitimate son be born, then because the son of the appointed daughter is the eldest by birth and not a female, he is therefore entitled to specific deductions for seniority. Since he holds the status of a son's son, as is declared by Manu in the text,—"When a daughter, appointed or not appointed to raise issue, gives birth to a son begotten by a man of equal class; in that son, the maternal grandsire has a son's son; let him present oblations and take the heritage;"[3]—"has a son's son", since the appointed daughter is a (subsidiary) son, hence her son, though a daughter's son, is a son's son. And since it is nowwhere declared that a son's son is entitled to a greater share (than a son) by reason of seniority. Nor can it be said that this is in conflict with the text,—"The son that will be born of her shall be my son,"[4]—as it affirms sonship of the son of an appointed daughter. Because the above meaning being in conflict with Manu, this text must be explained as intending the term "son" in a secondary sense on account of his being the giver of oblations. As the term "son" is applied to an appointed daughter in a secondary sense, she being not a male child, so also to the son begotten by an appointed daughter who is begotten by a man himself; since although he is male he is not begotten by the man himself, and since the term 'son' primarily signifies a male child begotten by a man himself.

18. Likewise it would follow from that (text of Yogísvara, § 16), that other sons too are not entitled to any share, should there be the next preceding son; but an exception is ordained by Vasishṭha in the text,—"If a legitimate son be born after a son has been adopted, the son given is entitled to a quarter share."[5] Here the term "son given" is indicative of others also, such as a son bought, for they are equally adopted; accordingly Kátyáyana says,—"If a legitimate son be born, the rest of the sons are entitled to a quarter share provided they be *savarṇa* (of the same class); but if they be *asavarṇa* (of a different class) they are entitled to food and raiment only."[6] The meaning of the text of Kátyáyana is this: *savarṇa, i.e*, the wife's son, the son given, &c., they are entitled to a quarter share when there is a legitimate son; *asavarṇa, i.e.*, the maiden-born son, the secret-born son, the son received with a pregnant bride and the son of the twice-married woman; these, however, are not entitled even to a quarter share when there is a legitimate son, but are entitled to food and raiment only. Accordingly, Vishṇu prohibits the participation of a quarter share by a maiden-born son and the like, if there be a legitimate son, in the text,—"But the

[1] Manu, IX. 134.
[2] Brihaspati, XXV. 35.
[3] Manu, IX. 136.
[4] Vasishṭha, XVII. 17.
[5] *Ibid*, XV. 9.
[6] II. Cole. Dig., 348, CCXVIII.

maiden-born son, the secret-born son, the son received with a pregnant bride and the son of the twice-married woman are not preferable; they are not at all entitled to participate in the pinda and the heritage."[1] In default of the legitimate son, &c., the maiden-born son, &c., are certainly entitled to take the paternal property in its entirety, by reason of the text,—"In default of the preceding one among these, every succeeding one, &c.," (§ 16). As for the text of Manu, *viz.*,—"The legitimate son alone is the master of the paternal estate; but for the sake of humanity, he shall allow sufficient maintenance to the rest,"[2]—that also is to be explained to prohibit the quarter share in case the son given and the like be inimical to the legitimate son and devoid of good qualities; and to refer to the maiden-born son, &c., since they being declared (in the text of Kátyáyana) to be entitled to food and raiment only, this text should be based upon the same foundation.

Again, Manu himself has declared that the wife's son is entitled to a fifth or a sixth share,—"Let the legitimate son, when dividing the paternal heritage, allot to the wife's son a fifth or a sixth share out of the patrimony."[3] The distinction is, that a sixth share should be allotted to him, if there be both animosity (towards the legitimate son) and want of good qualities; and a fifth, if there be only one of these defects. But the quarter share for the son of an appointed daughter, whom Manu has declared to be entitled to an equal share, and the third share for the wife's son who has been declared to be entitled to a fifth or sixth share,—as mentioned in the passage of the Bráhmapuránа, namely,—"The legitimate son though next born, is entitled to the entire patrimony; the wife's son takes a third share; and the son of the appointed daughter, a fourth,"[4]—are to be considered to refer to a son of the appointed daughter who is utterly devoid of good qualities and is of a different class, and to a son of the wife who is highly endowed with good qualities and friendly to the legitimate son.

In order to show that, in default of the legitimate son, the son given takes the entire estate, Manu has commenced the text,—"But if the son given of a person be endowed with all good qualities, he shall certainly take the estate of that person,—though accepted from a different *gótra* or family,"[5]—the particle 'though' signifies 'and *a fortiori* if accepted from the same *gótra* or family'. The very same sage has prohibited the taking by the son given of the property belonging to the natural father, in the text,—"A given son must not claim the family and the estate of the natural father: to him who gives away his son in adoption, the ambrosial pinda which follows the family and the estate is lost."[6] The pinda which the giver would have received from that son is lost to him; "ambrosial", *i.e.*, causing satisfaction to the manes of ancestors,—

[1] Not found.
[2] Manu, IX. 163.
[3] *Ibid*, IX. 164.
[4] II. Cole. Dig., 340, CCXI.
[5] Manu, IX. 141.
[6] *Ibid*, IX. 142.

is the adjunct of pinda; "which follows the family and the estate", embodies the reason.

The following text relative to the given son alone and showing his right to a quarter share when there is a legitimate son, is declared by Vasishtha,—"If after he has been taken in adoption a legitimate son be born, the given son takes a quarter share."[1] A text of Kátyáyana has already been cited (para. 1) which is applicable also to the son bought and the like. That text is read in the Kalpataru,—"are entitled to a third share"; and if this reading be correct, then that text is to be explained to mean that the participation of a third share takes place in case the son given and the like are endowed with more good qualities than the legitimate son.

Manu himself has declared also the equal participation of the wife's son with a legitimate son, in the texts,—"If a younger brother begets a son on the wife of an elder brother, then the distribution in such a case shall be equal; this is the settled law. The (wife's son who is) inferior cannot get in right of the superior; the father is superior on account of procreation, therefore (the wife's son) shall legally take the aforesaid share. He, who protects the estate and the wife of a deceased brother, shall, after generating a son to the brother, make over his estate to him. If there be a legitimate son and a wife's son entitled to the property of the same father, each shall take what belonged to his natural father, and not the other."[2] The legitimate son being the subject commenced, although it seems that the equal participation of the wife's son is mentioned relatively to the legitimate son, still because the meaning that is suggested by the context cannot be adopted should there be conflict of texts, therefore it is to be understood that the above text means the participation of a share equal to that of the natural father. Hence in the subsequent passage the superiority of the natural father is set forth. Also by the text,—"he shall, after generating a son to the brother, &c.",—it is declared that he shall give him the property of him to whom the wife's son belongs, *i.e.*, such a son being the representative of the brother shall take a share equal to his.

Similarly, are to be anyhow reconciled the texts of Brihaspati and other sages, which declare greater or lesser shares for the wife's son, &c. Thus Brihaspati says, "The other five or six sons beginning with the wife's son are equal sharers."[3] Hárita ordains,—"One about to distribute shall allot one-twenty-first to the maiden-born son, one-twentieth to the son of a twice-married woman, one-nineteenth to the son of two fathers, one-eighteenth to the wife's son, one-seventeenth to the son of an appointed daughter; and the rest shall be given to the legitimate son."[4] In the Bráhma-purána it is said, "A legitimate son though next born (or begotten

[1] Vasishtha, XV. 9.
[2] Manu, IX. 120, 121, 146 and 162.
[3] Brihaspati, XXV. 39.
[4] II. Cole. Dig., 349, CCXIX.

on a woman of inferior class) takes the entire estate, the wife's son takes a third part, the son of an appointed daughter a fourth, the son made a fifth share, the secret-born son a sixth, the deserted son a seventh share, the maiden-born son an eighth share, the son received with a pregnant bride a ninth part, the son bought gets a tenth, the son of a twice-married woman, however, obtains the next, the self-given son a twelfth; but the son of a Súdrá woman, a thirteenth part of the paternal property; a person of the same *gótra* or a virtuous student (shall take the remainder)."[1] Here with every clause should be construed, 'when there is a legitimate son', by reason of the text,—"In default of the preceding one among these, every succeeding one, &c." (§16). It has previously been shown (para. 2) to what case is applicable the first verse of the above passage, namely, "A legitimate son, &c." The reconciliation of the others also is to be made as is proper according to the local customs or agreeable to a comparison of the qualities.

19. Manu has divided the sons into two sets of six, and declared that the first six are heirs (*dáyádas*) and kinsmen, and that the latter six are not heirs but kinsmen, as in the text,—"The legitimate son and the wife's son also, the son given and the son made, the secret-born son and the deserted son, these six are heirs (*dáyádas*) and kinsmen: the maiden-born son, the son received with a pregnant bride, the son bought, likewise the son of a twice-married woman, the self-given son and the son of a Súdrá woman, these six are not heirs but kinsmen."[2] The meaning of this text is as follows:—In default of any near heir of the sapiṇḍas and the samánodakas of their father, the first six are entitled to their estate, but the latter six are not entitled to the same; but the division into these that are heirs (*dáyádas*) to the father and those that are not so, would not be resonable, because the right of all the sons in default of the preceding one, to take the property of the father is equal, by reason of the text,—"In default of the preceding one among these, &c.," (§ 16); and because the text,—"Neither the brothers nor the parents but the sons take the estate of the father,"[3]—which is declared after the text,—"The legitimate son alone is the master of the paternal property"—establishes that all the subsidiary sons are entitled to take the paternal property; and because the term *dáyáda* is mostly applied to heirs other than the son, in many texts such as,—"Shall compel even the *dáyádas* to give:" but the status of kinsman, *i.e.*, the qualification of performing the ceremonies of offering libations of water, &c., by reason of being sapiṇḍa or samánodaka, is common to both the sets of six.

But Háríta says,—"Six are kinsmen and heirs; the son begotten by a man himself on his chaste wife, the wife's son, the son of the twice-married woman, the maiden-born son, the son of the appointed daughter, and one secretly born in the house are kinsmen

[1] II. Cole. Dig., 344, CCXVII. [2] Manu, IX. 159 and 160.
[3] Manu, IX. 185.

and heirs: the son given, the son bought, the deserted son, the son received with a pregnant bride, the son self-given and the son found by chance are not heirs of kinsmen."[1]—"The son begotten by a man himself on his chaste wife," means the legitimate son; "the son found by chance" is one that is bereft of the mother, father, &c., and is suddenly found by a person who, after satisfying him, says—'be you my son', and so adopts him,—that is to say, the son made.

Now here the conflict with Manu is clear. Because by him, the maiden-born son and the son of the twice-married woman are enumerated among those that are not heirs to kinsmen; while by Hárita among those that are kinsmen as well as heirs: again the son given, the son made and the deserted son are reversely enumerated. Hence the conflict is to be removed thus; their applicability is to be determined with reference to qualities such as equality in class, or with reference to local customs.

Baudháyana, however, concurs with Manu in what he says (about this subject) in the text,—"The legitimate son, the son of the appointed daughter, the wife's son, the son given, the son made, the secret-born son and the deserted son are pronounced to be heirs: the maiden-born son, the son received with a pregnant bride, the son bought, likewise the son of the twice-married woman, the self-given son and the son of a Súdrá woman are pronounced to be kinsmen."[2]

Devala, having described the legitimate son, the son of the appointed daughter, the wife's son, the maiden-born son, the secret-born son, the deserted son, the son received with a pregnant bride, the son of the twice-married woman, the son given, the self-given son, the son made and the son bought, says,—"These twelve sons are declared for the sake of issue: some are sprung from himself; some are sprung from another; some are acquired; and others become sons independent of any exertion. Of these, the first six are so to the father alone: a distinction also among the sons are heirs to kinsmen, the latter six according to the priority in the order of enumeration is ordained: all these sons indeed are considered entitled to take the heritage of one having no legitimate son; but should a legitimate son be subsequently born, they have no right on account of seniority: of these sons, those that are equal in class, take a third share; but those inferior in class, shall remain dependent upon him, receiving food and raiment."[3]—Of the sons enumerated, it is clear who are sprung from himself and so forth.

Nárada also says,—"The legitimate son, the wife's son, the son of the appointed daughter, the maiden-born son, the son received with a pregnant bride, likewise the secret-born son, the son of the twice-married woman, the deserted son, the son given, the

[1] II. Cole. Dig., 331, CLXXXVII. [2] Baudháyana, II. 2, 3, 31 & 32.
[3] II. Cole. Dig., 332, CXC.

son bought, likewise the son made, and the self-given son; these are pronounced to be the twelve descriptions of sons. Of these, six are kinsmen and heirs; and six are not heirs but kinsmen. Each, according to the priority in order, is inferior. On the death of the father, they succeed to his estate according to their order: in default of the superior let the inferior take the estate."[1]

Manu says,—"On failure of the superior, the inferior in order is entitled to the heritage; but if there be many equal, all become sharers of the estate."[2]

Brihaspati says,—"The son given, the deserted son, the son bought, the son made, and likewise the son of a Súdrá woman; all these when pure in class, are considered as sons of middle rank, entitled to the heritage: the wife's son is censured by the virtuous, so likewise are the son of the twice-married woman, the maiden-born son, the son received with a pregnant bride and the secret-born son."[3]

Hárita says,—"The son of a Súdrá woman, the self-given son, and the son purchased; all these who are pronounced kinsmen are undoubtedly *káṇḍaprishṭha*; there is no doubt that, inasmuch as he having left his own family joins a different family, therefore by reason of that misconduct he is called *káṇḍaprishṭha*."[4]

Yama says,—"The son given at a time of distress, the self-given son and the son of a Vaishṇaví, all these three described by Manu are *káṇḍaprishṭha*; since the family is called the *káṇḍa*, and they left their previous family. But let him who is eldest remain in the family. He, who having left his own family, betakes himself to a different family is considered as *káṇḍaprishṭha* on account of that misconduct."[5] In the Kalpataru it is said that "Vaishṇaví" means a Súdrá woman.

20. In the following text, Yogísvara lays down a restrictive rule in the shape of the conclusion of what has been said,—"This law propounded by me refers to sons equal in class." This law which is pronounced by me in the text,—"In default of the preceding one among these, every succeeding one, &c.,"— is to be understood to refer to the wife's son, &c., that belong to the same class with the father, and not to those of a different class. Of them the maiden-born son, the secret-born son, the son received with a pregnant bride and the son of the twice-married woman can be of the same class, through their natural father; for they themselves have not the distinctive feature of the pure and mixed classes. Since Yogísvara himself having discriminated the pure and mixed classes, says, "This law is declared to refer to married women."[6]

The sons sprung from a father of a superior class and a mother of an inferior class,—and belonging to the mixed classes such as the

[1] Nárada, XIII. 45, 46, 47 and 49.
[2] Manu, IX. 184.
[3] Brihaspati, XXV. 40 and 41.
[4] Not found.
[5] Not found.
[6] Yájñavalkya, I. 92.

Múrdhávasikta are included under the definition of the legitimate; hence the mode of partition by them has been declared by the text, —"The sons of a Bráhmin have four shares, or three, or two, or one according to the class, &c.," (Part 1, § 25, para. 1). Consequently, it is on their default that the wife's son and the rest are entitled to the paternal estate.

21. The son of a Súdrá woman, however, although legitimate, is not entitled to take the entire paternal property, notwithstanding the default of other sons. Accordingly, Manu says,—"Whether one has a son or is destitute of a son, let him not, according to law, give more than a tenth to a son by a Súdrá woman."[1] Whether one has a son by a wife of equal class or destitute of sons by a wife of equal class; when he is dead let not his wife's son, &c., or any other heir give to a son by a Súdrá woman more than a tenth out of his property. From this text it appears that in default of a son by a wife of equal class, a son by a Kshatriyá or a Vaisyá wife, takes the entire paternal property. As for the right of a son by a Súdrá woman to take one share, declared by Yogísvara and other sages in texts like,—"The sons of a Bráhmin, according to the class, take four shares, or three, or two, or one, &c.,"—that is to be understood to refer to a Súdrá woman's son of a very good character; since, otherwise, there would be conflict with Manu. And the text of Manu, namely,—"A son of a Bráhmin, a Kshatriyá or a Vaisyá, by a Súdrá woman, is not entitled to take the heritage,"[2] —has already been explained.

22. A special rule is propounded by Yájñavalkya with regard to the partition of the property of a Súdrá, in the text.—"One begotten by a person of the Súdrá class, even on a female slave, takes a share by the choice (of the father); when the father is dead, let the brothers make him partaker of half a share: when there is no brother, let him take the whole, provided there be no daughter's son."[3] A son begotten on a female slave by a Súdrá obtains a share by the choice of the father: after the father's death, however, let the brothers, *i.e.*, the sons by a Súdrá woman lawfully wedded, make him, *i.e.*, the son of the female slave, partaker of a share equal to half of their own share. Here from the plural number (in 'brothers') it should not be erroneously concluded that every one must give half of his share; for if that were so, then one having many brothers would get a much larger portion of the property than they, and that would be very unreasonable: but the sons by a Súdrá woman, each take a half share of what is allotted to a legitimate son; the singular number (him) and the plural number (brothers) indicate the class and the individual. But in default of a son by a lawfully wedded Súdrá woman and of his sons, &c., the son of a female slave, also, gets the entire property of the Súdrá father; this appears to be the purport.

[1] Manu, IX. 154. [2] Manu. IX. 155.
[3] Yájñavalkya, II. 133 and 134.

23. From the use of the term "a person of the Súdrá class" (in Yájñavalkya's text, § 22,) it appears that one begotten by a twice-born person on a female slave, cannot, notwithstanding the desire of the father, get a share, or a half share after his death; the taking of his entire property is out of the question: but he is entitled only to maintenance, provided he be not disobedient.

CHAPTER III.

LAW OF SUCCESSION TO THE ESTATE OF A PERSON SEPARATED AND NOT REUNITED.

PART I.

1. Now are mentioned those, who, in default of the principal and subsidiary sons, are entitled to take the estate of one who is deceased, degraded, gone to retirement or the like.

On this Yogísvara says,—"The wife (*patní*) and the daughters also, the parents, brothers likewise, their sons, the gentiles (*gotraja*), cognates (*bandhu*), a pupil, the fellow-student: in the absence of the preceding one, every succeeding one is indeed heir to the estate of a sonless person, who departed for heaven. This rule extends to all classes."[1] The meaning is: The wife and the rest shall, agreeably to the order in which they are mentioned, *i.e.*, in the absence of each preceding one, the next succeeding one,—take the estate of a person who departed for heaven, *i.e.*, is deceased, and is sonless, *i.e.*, destitute of the twelve kinds of sons previously described; this rule is to be understood to apply to all, *i.e.*, the mixed classes, whether they are sprung from a high-caste father and a low-caste mother, or from a low-caste father and a high-caste mother,—as well as to the (four principal) classes, such as the Bráhmin.

2. First of all the (*patní*) or the lawfully wedded wife takes the estate. The term (*patní*) itself signifies a woman espoused in the prescribed form of marriage, agreeable to the aphorism of Páṇini, —"The term *pati* (husband) is changed into *patni* (meaning the correlative) implying relation through a sacrifice." The singular number (in the term *patni* in Yogísvara's text, § 1,) implies the class; hence if a person leaves more wives than one, then all of them, —first those of the same class (with the husband) and after them those of a different claas,—shall take the husband's property dividing the same amongst themselves.

From the use of the term *patni* (in Yájñavalkya's text, § 1,) it appears that a wife espoused in the *ásura* or the like (disapproved) form of marriage has no right to take the property when there is

1 Yájñavalkya, II. 135 and 136.

another wife espoused in a lawful form of marriage. To this effect is the following passage of law,—"A woman, however, who is purchased by giving price, is not to be considered as a *patni;* for neither in a sacrifice in honor of the gods, nor in one in honor of the departed ancestors she (can be the companion of her husband, *i.e,* the purchaser, when performing such a sacrifice): the poets (prophets or sages) look upon her as a female slave."[1] In this text her status of a female slave is mentioned with the intention that she has not the right of becoming the indispensable companion in the performance of ceremonies having spiritual merit for their end, but not with the intention that intercourse with her is forbidden; for she being espoused (though in a disapproved form), the objection of her being the wife of another man, cannot arise. Accordingly, Manu, having described the virtuous and the vicious forms of marriage, declares that the virtues and vices attach solely to the issue (of such marriages),—"If a wife is espoused by a man in the blameless forms of marriage, the offspring becomes unblameable; and if in the reprehensible forms, the offspring becomes reprehensible; therefore the reprehensible forms should be studiously avoided."[2] The reprehensibility of the offspring, again, refers to the absence of good conduct and character, not, however, to exclusion from the castes pure or mixed; for the sole fact of being begotten on a married woman by the man who marries her, determines the caste pure or mixed (of the offspring) by reason of the text,—"This law is ordained with regard to married women." Hence, by the text,—"For neither in a sacrifice in honor of the gods, nor in one in honor of the departed ancestors she, &c."[3]—the right to be the companion is prohibited.

Accordingly, it is indicated by the term *patni* that the competency also, of performing the rites in honor of the ancestors, is a reason for the succession to the property of the husband. Hence Prajápati says that the estate of the husband may be taken only by a wife who is chaste and who is competent to associate with the husband in the performance of ceremonies enjoined in the Sruti and the Smriti, as in the text,—"Dying before the husband, a wife devoted to the husband partakes of his consecrated fire; but if the husband die before her, she takes his property: this is the primeval law."[4] Also Vriddha Manu says,—"The sonless wife (*patni*) alone, keeping unsullied the bed of her husband and persevering in religious observances, shall offer oblations to him and take his entire share."[5] With reference to this text, the author of the Smritichandriká says, that since the order of reading of the latter half is opposed by the order indicated by the sense, therefore the widow first obtains his entire share and then presents oblations. This is to be rejected. Because nothing is intended to be expressed by the order: the sole object of the text is to establish her right to both. Otherwise the

[1] Not found.
[2] Manu, III. 42.
[3] Not found.
[4] Brihaspati, XXV. 49.
[5] II. Cole. Dig. 535, CCCCVIII.

funeral ceremonies would have to be postponed till the share be obtained: but that is prohibited in various passages of law. Also because there would arise the objection of assuming some spiritual purpose. By the particle "alone" in the term "the wife alone", it is shown that even to the performance of the funeral ceremonies of her sonless husband, she alone, like a son (had there been one) of her sonless husband, is entitled, notwithstanding a brother and the rest enumerated in the text,—"The wife and the daughters also, &c."

The very same meaning is expressed at length by Prajápati,—"Having taken his moveable and immoveable property, the precious and the base metals, the grains, the liquids, and the clothes, let her duly offer his monthly, half-yearly and other funeral oblations. With sráddha and by pious liberality, let her honor the paternal uncle of her husband, the spiritual preceptor (or the parents) and daughter's sons, the children of the sisters, the maternal uncle, and also decrepit persons, guests and females (or the other wives of inferior status)."[1]—"The base metals" are lead, tin and the like (*i.e.*, other than gold and silver); "sráddha" signifies the food intended for the ancestors; "pious liberality" means reservoir of water and the like (works for public good) or the fees and the like (given to Bráhmins) for the performance of a ceremony. What is intended is this: Having obtained the husband's entire estate, including even the immoveables, the *patni* should, under the superintendence of the husband's relatives, perform the ceremonies conducive to the spiritual benefit of her husband and herself, (the ceremonies) which can be accomplished by wealth and which a female is competent to perform.

The same sage declares that those that cause injury to her who conducts herself in this way are to be punished as robbers,—"The gentiles and the cognates, however, who become her adversaries or injure her property, let the king chastise by inflicting on them the punishment of a robber."[2]

The follwing passage prohibitory of the taking by the *patni* of immoveable property, is quoted in the Smritichandriká as a text of Brihaspati;—"When the husband is separated, the pledge and various others that are recognised, as property, the wife (*jáyá*), after the death of her husband, obtains, excepting the immoveable." And in order to prevent the inconsistency of this text with that of Prajápati, namely,—"Having taken his moveable and immoveable, &c."—it is concluded that this refers to a wife destitute of daughters, by rejecting the opinion of others, namely, that this passage refers either to a wife without good character or to the property of an unseparated husband,—as being contradictory to the remaining part of the above text, namely,—"Even when partition has been made, the wife (*stri*), though preserving her character, is not entitled to immoveable property."

[1] Brihaspati, XXV. 50 and 51. [2] Manu, VIII. 29.

The author of the Madanaratna points out a defect in the above conclusion on the ground that the above text of Brihaspati is an interpolation inasmuch as it is not cited in the Mitákshará, the Kalpataru, the Haláyudha and the other commentaries,—but that the text of Prajápati, namely,—"Having taken his moveable and immoveable, &c."—is a genuine one, since it is quoted in all the commentaries; and characterizes the conclusion come to by the author of the Smritichandriká to be unreasonable, being simply an emanation from his inner consciousness: and he himself forms the following reconciliation, supposing the text of Brihaspati to be a genuine one, namely, that the taking of the entire property, including the immoveable—refers to a wife espoused in the forms of marriage, called Bráhma and the like, inasmuch as the term *patni* is used in these texts; but that the text of Brihaspati is relative to a wife espoused in the Ásura or the like form of marriage, because the terms *jáyá* and *stri* only are employed in that text.

This is refuted in the Smritichandriká itself, in which it is said that a wife wedded in the Ásura or the like form is not comprised by the term *patni*; and the texts also, in which the term *jáyá* and the like occur, refer to her (*i.e.*, the *patni*), inasmuch as these texts rest on the same foundation (with the texts in which the term *patni* is used). As for what is said, namely, that the conclusion arrived at by the author of the Smritichandriká is a dogmatic one,—that also is not tenable. Because, if there be a daughter, then through her son there is a possibility of the enjoyment of immoveables, and of the spiritual benefit of the proprietor, therefore even the immoveables are taken (by the wife); but one that is destitute of daughter does not take the immoveable property by reason of the absence of such possibility: in this therefore may consist the reason (for the above conclusion of the author of the Smritichandriká). Accordingly it has been previously set forth that without the consent of the sons the father has no right to alienate even his self-acquired property.

3. As for what appears from the text of Kátyáyana, *viz.*,—"When the husband is dead, (the wife) preserving the honor of the family shall take the share of the husband for her life (or livelihood), not, however, the right to make gift, mortgage or sale,"[1]—namely, that the wife succeeding to the property of the husband is entitled to mere maintenance out of the estate, but has no right to make gift, mortgage or sale thereof;—that also refers to the want of right to make gifts to players, dancers, &c., for secular purposes. Because he (Kátyáyana) himself sets out her right to make gifts for spiritual purposes, also to mortgage or sell so much as is sufficient for such purposes, in the text,—"Persevering in religious observances and fasting, leading a life of austerity, and constantly engaged in the control of passion and in making gifts, (the widow) though sonless, ascends to heaven,"[2]—from the phrase "ascends to heaven" it appears that she has power to make gifts, &c., even in religious

[1] Not found. [2] Brihaspati, XXIV. 10.

ceremonies that are optional, and *a fortiori* in those daily and occasional ceremonies which are enjoined by the Sastras, and the omission whereof entails demerit. And because to the same effect is the text of Prajápati cited before, namely,—"Having taken the moveables and immoveables, &c." The author of the Smritichandriká, and others, say, that in this text too, the first (of the series of duties) being enumerated, her power to perform the optional ceremonies (at the expense of her husband's property) follows.

There is again another text of Kátyáyana himself, namely,—"Let the sonless (widow), preserving unsullied the bed of her husband, and abiding with her venerable protector, only enjoy (her husband's property) being moderate until her death, after her, let the heirs (or co-heirs, *dáyádas*) take."[1]

In interpreting this text the author of the Smritichandriká says;—The meaning is, "let her being moderate", *i.e.*, patiently enduring any opposition, offered by the (husband's) co-heirs (*dáyádas*), to the application of the wealth, "enjoy until her death". This again refers to such undivided property as the widow herself has taken for her livelihood, when the father-in-law, &c., being engaged in other pursuits are unable to afford protection, maintenance and the like: for had it referred to divided property, it would have been contrary to the doctrine propounded by Manu and others.

The oriental commentators, however, putting an interpretation which appears on the face of the text (of Kátyáyana) say that the wife has no power of making gift, mortgage, or the like (disposition) of her husband's property, in the following passage:—"'Abiding with her venerable protector,' *i.e.*, with her father-in-law or the like (kinsman of her husband), let her only enjoy her husband's estate during her life; but let her not, according to her pleasure, deal with it as with stridhana by making a gift, mortgage, sale, or the like: after her, let the heirs, *i.e.*, the daughters and others who would be entitled to his property (in default of the wife), take the estate, but not the kinsmen; since they being inferior to the daughter, &c., ought not to exclude these: for the widow debars them (the daughter, &c., from succession), and the absence of the obstacle (in the shape of the widow) is equal both in the case of the destruction, and in the case of utter absence, of her right; they (the daughters, &c.) therefore cannot reasonably be excluded. Nor can it be said that "let the heirs" to stridhana "take", for then there would be tautology, inasmuch as Kátyáyana himself has declared in other texts the heirs to stridhana. Hence those persons who, in the text,—"The wife and the daughters also, &c."—are in the absence of the preceding ones, exhibited as next heirs to the property of a sonless deceased person [who was separated and not reunited] shall, in like manner as they would have succeeded in case of the utter absence of the wife's succession, succeed to the

[1] II. Cole. Dig., 595, CCCCLXXVII.

residue of the estate after her enjoyment, upon the death of the wife in whom the succession had vested. At the time the succession of the daughters, &c., is proper, since they confer greater spiritual benefits than others. The following passage of the Mahábhárata in the chapter on the Religious merit of Gifts, is also in support of the above view,—'It is ordained that the property of the husband when devolving on wives has enjoyment (*upabhoga*) for its use: let not women on any account make a waste of their husband's property.'[1] Enjoyment again should not be by wearing delicate apparel and similar luxuries; but since a widow may benefit her husband by the preservation of her person, the enjoyment of property sufficient for that purpose is authorized. Thus in the text,—'With sráddha and pious liberality, &c.'—Brihaspati intends by the term paternal uncle, any sapiṇḍa of her husband; by the term daughter's son, the progeny of her husband's daughter; by the term sister's son, the husband's sister's son; and by the term maternal uncle, her husband's mother's family: to these alone, let her give presents in proportion to the wealth, at her husband's funeral rites, and not to the family of her own father. With their consent, however, she may give to them also. Accordingly, Nárada says,—"When the husband is dead, his kin are the guardians of his sonless widow. In the disposal of property, and care of herself, as well as in her maintenance, they have full power. But if the husband's family be extinct or contain no male, or be helpless, the kin of her own father are the guardians of the widow, if there be no relations of her husband within the degree of a sapiṇḍa."[2]

On this it is to be said. Is it, that even when a gift or the like disposition of her husband's property is made by the widow,—this is *per se* invalid? This, however, is not reasonable, since her succession to the entire estate of her husband being declared in the texts of Manu and other sages, her proprietory right arises thereto; hence it would be contradictory to say that gifts, &c., (made to her) are *per se* invalid. Accordingly, Jímútaváhana himself, having cited the following texts prohibiting gift and the like disposal of immoveable property, namely,—"But neither the father nor the grandfather is so, of the whole immoveable property,"[3]—"Separated or unseparated kinsmen are equal in respect of immoveables, &c."[4]—and—"Immoveables and bipeds, although acquired by a man himself, &c."[5]—concludes that these texts are intended to show that moral guilt is incurred by a man of evil disposition, who makes gift and the like merely for the purpose of putting the family to distress; but they do not establish the invalidity of gifts and the like in themselves; for it would be unreasonable to say that they do so, because the proprietory right which is defined to be the power of disposal according to pleasure,—in the immoveable property is not distinct from what it is in other objects, and because a fact

[1] II. Cole. Dig., 528, CCCCII.
[2] Nárada, XIII. 28 and 29.
[3] I. Cole. Dig., 411, XII.
[4] Brihaspati, XXV. 93.
[5] I. Cole. Dig., 411, XIII.

cannot be altered even by a hundred texts. Hence in the manner mentioned by him, let, in this instance too, moral offence, by reason of the violation of the prohibition, be incurred by a widow who out of evil disposition makes gifts, &c., of her husband's estate, solely for the purpose of putting the kinsmen (of her husband) to distress. And certainly a moral offence too is not committed by one who makes gifts for religious purposes, or who sells or mortgages for the purpose of her own maintenance. Nor can it be said that from the restriction expressed by the term, "only enjoy", as well as from the declaration—"After her let the heirs take",—what alone can follow is her incompetency to make gifts, &c., as in the case of joint property. Because this (*i.e.*, the separate property) which is the subject of exclusive right is different from joint property which is the subject of common right. Nor can it be asserted that inasmuch as the enjoyment by the widow (of her husband's estate), which follows (from the assertion of her heirship,) cannot be taken to be intended to be declared (in the text of Kátyáyana), therefore the text is solely for the purpose of prohibiting gifts, &c., and accordingly her want of right to make gifts, &c., inevitably follows. Because, (you say) a fact cannot be altered, hence it cannot but be admitted for the sake of the consistency of that rule, that the text is intended to prohibit the waste of the property by useless gifts, &c. Otherwise if her right (to make gifts, &c.,) be not admitted, then there would be an irreconcileable conflict (of the text of Kátyáyana) with the texts enjoining gifts, namely,—"... engaged in the control of passions and in making gifts ...,"—and —"... with sráddha and pious liberality let her honor, &c." As for what is said, namely, that let the heirs, *i.e.*, the daughters, &c., who are declared in the text,—"The wife and the daughters also, &c."—to be entitled to the estate in default of the wife, take, since the default of the wife who forms the obstacle (to the succession of the daughters, &c.) is equal, as in the utter absence, so in the destruction, of her right :—that is only plausible. Again, as there would be tautology if the term "heirs" be interpreted to signify the heirs to stridhan by reason of their being mentioned in another text, similarly, there would be the same fault of tautology (in the interpretation put by you), for the heirs of the husband also are mentioned by Kátyáyana in a separate text.

But in fact when a person in whom right vested dies, it is proper that property should be inherited by his near relations; hence, as the words wife and the like are relative terms, what have the daughters and the like of the former proprietor to do, when right to the husband's estate had vested in the wife? Hence, although the absence of the preceding one, the previous absence (of something that subsequently comes into existence) the destruction (or the future absence of something previously existing), the utter absence (or the absence without relation to any particular time), the relative absence of the obstacle, and the reciprocal absence (or the negation of identity) are similar (all these being of the same

category, namely, negation), still when the owner of any property is dead, then if he leave no male issue, his property is inherited by his relations, such as his wife, &c.: this is what the text (of Yájñavalkya, § 1,) means. Otherwise there would be great confusion, since if the daughters and the rest having succeeded to the property of their father, &c., die, then in supersession of their children, the father, &c., of the father who was the previous owner, would take the property. Hence when the wife after having succeeded to the property of her husband dies, the residue of the property after her enjoyment would have devolved on (her heirs such as) the daughters and the like, by reason of texts like the following,—"And the daughters, the residue of the mother's property after liquidating her debts, &c.:"—but it is prevented by the passage,—"After her let the heirs take." And the construction of the text (of Kátyáyana) is arrived at thus: on perusing "let the heirs take", the question occurs, whose heirs? and the word "of the husband" connected with the word "bed" suggests itself and is construed with "heirs"; accordingly the signification of the text is as follows,—"After her let the husband's heirs or *dáyádas*", *i.e.*, those that are entitled to take his undivided property, "take" also what remains of the estate of a separated brother after the enjoyment thereof by his wife; and not the heirs to the estate of the wife, such as daughters and the like. Thus the last part (of Kátyáyana's text) expressing a meaning which is not expressed anywhere else, becomes significant: but according to the other view, this part would become useless, inasmuch as it would merely repeat what is declared in other texts.

Therefore, it is established that in making gifts for spiritual purpose as well as in making sale or mortgage for the purpose of performing what is necessary in a spiritual or temporal point of view, the widow's right does certainly extend to the entire estate of her husband; the restriction, however, is intended to prohibit gifts to players, dancers and the like, as well as sale or mortgage without necessity. Accordingly, the term "being moderate" is inserted; the meaning is, that on obtaining the property she shall not uselessly spend the property. The passage in the Mahábhárata on the religious merit of gifts, however, strongly supports our view, for it begins thus: "It is ordained that the property of the husband when devolving on wives has enjoyment for its use." Here enjoyment (*upabhoga*) signifies enjoyment allied to religious duty, not however vicious enjoyment; "ordained", *i.e.*, declared by Manu and others. In the latter half (of the passage) the very same thing is expressed, namely, "women shall not waste", *i.e.*, uselessly expend the property of their husband; by the phrase "on any account" it is intimated, that waste is under all circumstances reprehensible; *apahára* (waste) is theft,—making useless gifts to dancers, players and the like, and the wearing of delicate apparel, &c., the tasting of rich food, &c., and the like, also being improper for a widow who is enjoined to restrain her passions, are equal to

theft: thus the term *apahára* (waste) is used in a secondary sense. But gifts and the like for religious purposes are not so, and consequently cannot be included under the term *apahára* or waste. Therefore everything is consistent.

4. There are also many other passages of law, establishing the preferable right of the wife to succeed to the estate of her sonless husband who was separated and not reunited. Thus Brihaspati says,—"In the Vedas and in the Smritis, as well as in popular practice, a wife is declared by the wise to be half the body of her husband equally sharing the fruit of pure as well as impure acts. Of him, whose wife is not deceased, half the body survives. Why then should another get his property, while half his person is alive? Let the wife of a sonless deceased man take his share notwithstanding kinsmen, the father, the mother, or the uterine brother be present."[1]

Yogísvara also by declaring the right of every succeeding one to accrue in default of the preceding one, ordains the wife's succession in preference to all others.

Also Vishṇu says,—"The wealth of a sonless man goes to his wife; on failure of her it devolves on daughters; if there be none, it belongs to the father; if he be dead, it goes to the mother; on failure of her, it goes to the brothers; on their default, it goes to the brother's sons; if none exist, it passes to a kinsman (*bandhu*); on their default, it devolves on a distant kinsman (*sakulya*); on failure of these, it comes to the fellow-student; and for want of all those heirs the property goes to the king, excepting the wealth of a Bráhmin."[2] Here the term *bandhu* (kinsman) signifies a sapiṇḍa, and the term *sakulya* (distant kinsman) means a sagotra or one descended from a common ancestor in the male line (other than a sapiṇḍa, if by the term *bandhu* the cognates of the father and the like were comprised, then there would be a conflict with the order mentioned by Yogísvara.

Also Kátyáyana says,—"The wife is entitled to the estate of the husband, provided she is not unchaste; but on her default, a daughter, if she be then unmarried."[3]

There is also another passage of law,—"Now of a sonless person, the wife born in a (good) family, or also the daughters, in their default the father, the mother, the brother and (his) sons are pronounced (to be heirs)."[4]

In these texts it is established that the wife is first of all entitled to the estate left by the husband.

5. There are texts again, which are in conflict with the above texts. Thus Nárada declares the succession of the brothers in

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[1] Brihaspati, XXV. 46—48.
[2] Vishṇu, XVII. 4—13.
[3] Not found.
[4] Not found.

spite of the wife, and the maintenance of his wife, as in the text,—"Among brothers if any one die without issue or enter a religious order, let the rest (of the brothers) divide his wealth, excepting the wife's separate property. Let them allow a maintenance to his wives (*strinám*) until the end of their lives, provided they preserve unsullied the bed of their husband; but if they behave otherwise, the brothers may resume her allowance."[1]

Also Manu declares that the father or a brother is entitled to succeed to the property of a sonless person, not the wife, as in the text,—"Let the father or the brothers take the estate of a sonless person."[2]

The following passage of law asserts that the mother or the paternal grandmother is entitled to succeed to the estate of a sonless person,—"Let the mother take the estate of her childless son; and if the mother too be dead, let the father's mother take the property."[3]

Also Sankha, Likhita, Paithínisi and Yama declare the succession of the wife in default of the brothers and the parents, as in the text,—"The wealth of a sonless person, who departs for heaven, goes to the brothers; if there be none, let the parents take, or let the senior wife take."[4]

The wife who is, by Yogísvara, placed first to the exclusion of others, is declared also by Devala, to be entitled to succeed on failure of the brothers and the like, as in the text,—"Next let brothers of the whole blood divide the estate of a sonless person, or daughters also equal (in class); or let the father if he survive, or (half) brothers of the same caste, or the mother, or the wife inherit in their order."[5] Here by the term "brothers", half brothers are meant, since whole brothers are separately enumerated.

Also in the following text, the wife is not even enumerated by Kátyáyana, though father and others are mentioned as heirs,—"When a man who is separated, dies, then in default of sons let the father, or the brother, or the mother, or the father's mother in their order take the estate."[6]

6. Of these texts, conflicting with each other, Dháresvara makes the following reconciliation:—If the wife of a sonless brother who was separated but not reunited, accepts the appointment to raise issue, then and then only she obtains the estate of the husband; but if she be not solicitous of the appointment, then she gets mere maintenance like the wife of one who was unseparated or reunited: for it is through appointment alone, that the right of the wife of a sonless person accrues to the estate of her husband. But on what principle is this conclusion based? Because the wife's

[1] Nárada, XIII. 25, 26.
[2] Manu, IX. 185.
[3] *Ibid*, IX. 217.
[4] II. Cole. Dig., 532, CCCCIII.
[5] *Ibid*, 532, CCCCIV.
[6] *Ibid*, 552, CCCCXXV.

right of inheritance is shewn in many passages of law to arise through children alone. Accordingly, Gautama says,—"Let kinsmen allied by the pinda or funeral oblation, by *gotra* or family name, and by descent from the same patriarch share the heritage; or the wife of the childless person, or she (may) seek to raise up offspring."[1]—Let kinsmen allied by funeral oblation, by family name, and by descent from the same patriarch, take the heritage of a childless man; or let his wife take the heritage, if she seek to raise up issue to him: the particle 'or' conveys the meaning of 'if'; otherwise, the sense of alternative would be unreasonable, since there is no similarity between taking of the heritage and seeking to raise up issue. Likewise, also Manu declares that the wife's succession to the divided property is in right of the progeny, as in the text—"He who protects the estate and the wife of a deceased brother, shall after begetting son for the brother, make over his estate to him."[2] So likewise, even if partition has not taken place, Manu intimates that the right of inheritance arises through the offspring, thus,—"If a younger brother begets a son on the wife of an elder brother, then the distribution in such a case shall be equal; this is the settled law."[3] Therefore by the method of agreement and difference, it is established that the wife's right of inheritance is in right of progeny and not otherwise. Vasishtha also, in the text,—"An appointment shall not be accepted through covetousness for the heritage"[4]—forbids an appointment to raise issue to the husband if sought from covetousness, and thereby clearly intimates that the widow is entitled to the succession if she consents to the appointment and not otherwise. Accordingly it follows that the text of Nárada, namely,—"If any one of the brothers die, &c.,"—and similar texts refer to a widow who is unwilling to be appointed. Likewise in the text, namely,—"Their childless wives, conducting themselves aright, must be supported; but such as are unchaste should be expelled, and so indeed should be those that are perverse."[5]—Yogísvara also, by ordaining maintenance for the wives of the blind and the like who are destitute of sons, and thus intimating the superiority of the son's right to the wealth, indicates, by the parity of reason, that the wife's right of succession is in right of the issue alone. The following passage of law, namely,—"Property has come into existence for the purpose of sacrifices; therefore those, who are incompetent to perform these, are not entitled to inheritance, but are entitled to food and raiment"[6]—by declaring the exclusion from inheritance of sons, &c., though males who are incapable of performing sacrifices, does *a fortiori* oppose the right of succession of widows who are incapable of performing sacrifices. So also another text of law, namely,—"Property is ordained for sacrifices; therefore it should be given to virtuous persons, and not to women, to the ignorant or

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[1] Gautama, XXVIII. 21.
[2] Manu, IX. 146.
[3] *Ibid*, IX. 120.
[4] Vasishtha, XVII. 65.
[5] Yájñavalkya, II. 142.
[6] II. Cole. Dig., 434.

to the vicious"[1]—prohibiting even the gift of property to women and others, greatly deprecates the taking, directly by the widow, of the entire estate.

7. This view is not endorsed by Vijñánesvara and others; because in texts like—"The wife and the daughters also, &c.,"—there is no express mention of appointment, nor is it suggested by the context. Moreover, what is the cause of the widow's right to the heritage? Is it the appointment or the issue sprung therefrom? If it be the first, then the heritage would belong to the widow who accepts the appointment although no son be born, and (even if a son be born) it would not belong to the son begotten through the appointment, for (agreeably to this alternative) right to the husband's estate arises from the appointment alone. If it be the second, then the enumeration of the wife (as an heir in the texts) would be useless, since the children's right to the heritage is established by other texts. Again, if the argument be that women may have right to property through their husband alone, and not in any other way, therefore so long as the husband is alive, they have it through him; but in order to show that when the husband is dead they may have it through the issue, 'the wife' is so enumerated, which refers to a wife willing to accept the appointment. Then it is not a sound one; because it is shown by texts which will be cited hereafter, such as,—"What was given before the nuptial fire, what was presented in the bridal procession, &c."—that they may have right to property in other ways also. If it be said that it is only in the twofold way that her right to the husband's property arises, in that case, the text dealing with the estate of a sonless person ought not to commence with "the wife"; because while the husband is alive, her right to his property is established by the text of Gautama, namely,—"Union (of the husband and the wife) arises indeed from the joining of hands, (*i.e.*, marriage);"[2] and because, to say that when he is dead the right to his property arises by reason of appointment, is to affirm it only of the wife's son, but that also has previously been declared.

Again, the text of Gautama, namely,—"Or she (may) seek to raise up offspring"—has been interpreted to mean, 'if she seek to raise up issue', and has been set forth as an authority in support of the position that the wife of a sonless person may have the right of succession through appointment alone. But that is not reasonable. Because the sense of 'if' is not conveyed by 'or' that denotes an alternative. Nor can it be argued that, when it becomes unreasonable to say that 'or' denotes an alternative by reason of the dissimilarity in meaning between the succession to the estate and the desire for appointment, then inasmuch as indeclinable words convey various meanings, the particle 'or' may certainly be taken to convey the meaning of 'if', which renders the construction of the latter part with the first part (of the text of Gautama) reasonable.

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[1] II. Cole. Dig., 602. [2] Not found.

Because it is certainly reasonable to say that 'or' denotes an alternative, since it may refer to another duty suggested by the context, thus—'or she may seek to raise issue or restrain her passions'. Accordingly the succession to the husband's estate, independently of the appointment, becomes affirmed by also the text of Gautama. Moreover, since the appointment of a widow is prohibited; and since by the texts of Manu and others, such as—"The sonless wife preserving unsullied the bed of her husband, &c."—it is established that a widow is entitled to the estate, provided she remain chaste; and since by the text,—"such as are unchaste should be expelled"—even maintenance itself is disallowed to those that fail to continue in the path of duty; therefore the right (of unchaste widows) to the entire estate of the husband is certainly unreasonable.

As for the argument, namely, that from the texts of Manu and others, such as—"He who protects the estate and the wife, &c."—"If a younger brother begets a son on the wife of an elder brother, &c."—and—"An appointment shall not be accepted through covetousness"—is inferred by use of the method of agreement and difference, that the widow's right to the estate of her husband, whether separated or unseparated, arises through issue alone;—that is only plausible, the language of the texts does not convey the meaning deduced: the intention of the texts being that when the husband who is unseparated or reunited dies, then her right to his estate arises through issue alone, and that the appointment should not be accepted from covetousness. Accordingly, Nárada having declared,—"The sages hold that amongst the reunited brother however, that share (which would go to the husband on partition) she is not entitled to"[1]—establishes mere maintenance of his childless wives. Nor can it be argued that if the text of Nárada, namely,—"Among brothers if any one die without issue, &c.," (§ 5)—be thus taken to be relative to the estate of a person unseparated or reunited, then there would be tautology, for the same thing is expressed in the above text, *viz.*, —"The sages hold that among unseparated brothers, &c." Because in the first text are laid down the impartibility of woman's separate property, and their maintenance which are not ordained in any other text, and the subject is introduced by that part of the text (which conveys the same meaning as the other text). As for the text of Yogísvara, namely,—"Their childless widows conducting themselves aright, &c.;"—that, however, will be shewn in the chapter dealing with those that are excluded from inheritance, to refer to the wives of the impotent and the like, since the pronoun 'their' relates to those mentioned in the previous text.

As also for the argument that the property of a twice-born has for its object the performance of sacrifices, and that consequently it is improper that the property should be taken by a widow who is incompetent to perform sacrifices;—that too is unreasonable,

[1] Nárada, XIII. 24.

because the term 'sacrifice' is illustrative, it includes gifts, &c., and these the widow also is competent to make; for if the term were taken in its literal acceptance, then the property could not be used for gifts, burnt-offering and the like purposes other than sacrifices. But in reality the performance of religious rites is not the sole end of property; for in the text,—"Neglect not religious duty, wealth and pleasure according to ability,"[1]—likewise in the text,—"Let not morning, noon or evening be fruitless as regards religion, wealth and pleasure,"[2]—it is laid down that the pursuit of wealth and pleasure, that may be made by means of wealth, is necessary. Had wealth been designed solely for sacrificial purposes, then the wearing of gold (inculcated by the Vedas) would have had the sacrificial use for its object by reason of its intimate relation with sacrifices (as supposed); but this would be contrary to what is concluded (in the Mímámsá), *viz.*, that it is intended for secular purposes. By reason of such texts as,—"A woman is not entitled to independence"[3]—let there be only dependence of a woman, but there can be no objection whatever to her succession to the estate. And the text—"Property has come into existence for the purpose of sacrifices, &c.,"—however, is to eulogise the application of property to the performance of sacrifices. Accordingly, the latter part (of the other text) is—"to virtuous persons and not to women, to the ignorant or to the vicious." The author of the Mitákshará, however, says that these texts intend that the property which was acquired by the father for the purpose of performing a sacrifice, must, even by his sons or other heirs, be appropriated to that use alone and not to any other; for the following passage declaring it to be an offence (to act otherwise), is equally applicable to sons as well as to other heirs:—"He, who having received articles for sacrifice, disposes not of them for that purpose, shall become a kite or a crow."[4]

8. Srikara and others, however, say the conflicting texts relate to distinct cases: if the husband's estate is only sufficient for the maintenance of the wife, she takes the whole of it; but if there be a surplus, the brothers and the like take: to the very same effect is the text,—"and take the entire share"; for maintenance must be allowed. And they assign the following reason for that conclusion, *viz.*, that by this all the texts become reconciled.

This is not consistent with reason. Because the term 'estate which is mentioned but once (in the texts) is to be interpreted, when construing it with 'the wife', to mean so much property as is sufficient for maintenance; and when construing it with 'the brothers' or the like, to mean the unqualified estate: and this variableness in the meaning is not reasonable if uniformity is possible. And because the term 'entire' in Manu's text would be meaningless. Besides it is very unreasonable to say that, when

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[1] Yájñavalkya, I. 115.
[2] Gautama, IX. 46.
[3] Manu, IX. 3.
[4] *Ibid*, XI. 25.

there is no son, the wife gets no more than maintenance; for, on partition being made, whether during the lifetime of the husband or after his death, even when there are legitimate sons, the allotment to the wife of a share equal to theirs is ordained in the following texts, namely,—"If he makes the allotments equal, his wives shall be made equal sharers,"[1]—and—"The mother also, of those effecting partition after the death of the father, shall get an equal share." Nor can it be argued that in these texts too, the term "share" is intended to indicate no more than what is sufficient for maintenance. Because in that case the terms 'equal' and 'share' would become meaningless. And because, if it be held that what is sufficient for maintenance, is only intended, then in the latter part also (of the text), namely,—"If any have been assigned, let him allot the half,"—the meaning of the term 'half' would have to be altogether rejected. To say that what is intended is, that when the property is small a share equal to that of a son (should be given to her), and when the property is large, so much only as is sufficient for maintenance, is extremely unreasonable by reason of the variableness in the precept. Since the very same term 'equal share' would, having regard to some other text, signify, on one occasion when the estate is considerable, property sufficient for maintenance only; and on another occasion when the estate is small, its literal meaning: hence in the same precept the meaning of the sentence being different, there would be different sentences (couched in the same words):—and this is unreasonable. There would also be the error of admitting the simultaneous exercise of the twofold power of words, namely, that of conveying a literal and a metaphorical meaning.

Just as in the topic (in the Mímámsá) of the Cháturmásya, (*i.e.*, a sacrifice which takes four months for its completion, and which consists of four distinct sacrifices called the Vaisvadeva, the Varuṇapraghása, the Sákamedha and the Sunásirya; with regard to which there is the following text of Sruti:—"Here they construct the holy fire-place, not in the Vaisvadeva nor in the Sunásirya: for the Varuṇapraghása and the Sákamedha are the principal ones of the sacrifice, as in these two they establish the sacred fire," the adversary says that the injunction regarding the establishment of the holy fire (ordained for the sacrifice called Darsapaurnamásíya, whereof the Cháturmásya is a modification) is applicable also to the Cháturmásya, as indicated by the text,—"as in these two they establish the holy fire",—and this, he assigns, to be the reason for the prohibition of the construction of the sacred fire-place, as contained in the text,—"not in the Vaisvadeva nor in the Sunásírya",—for otherwise the prohibition of what cannot take place would be unreasonable: thereupon it is argued on the opposite side that this is not the prohibition of the construction of the holy fire-place which is rendered applicable to the Cháturmásya sacrifice by reason

[1] Yájñavalkya, II. 117.

of the extension of the injunction to that effect, declared with regard to the Darsapaurnamásiya; but this is the prohibition of the construction of the holy fire-place, as enjoined in the text in this topic, *viz.*,—"Here they construct the holy fire-place:" whereupon the adversary finds fault with the above opinion on the ground of variableness in the precept, for the text in the topic, taken together with the prohibition (in that very text) renders the construction of the holy fire-place optional, in the first and the last sacrifices, but it does independently of any other precept, render the construction of the holy fire-place obligatory in the two intermediate sacrifices: for fear of this variableness in the precept it is established in the conclusion that the precept,—"not in the Vaisvadeva, &c."—is absolutely a superfluous precept, for prohibition is unreasonable, of what cannot take place in the first and the last sacrifices; but the precept—"Here they construct the holy fire-place,"—together with the laudatory precept—"in these two they establish the holy fire"—enjoins the construction of the sacred fire-place in the two intermediate sacrifices, namely, Varuṇaspraghása and Sákamedha; but this is not in consequence of the extension to this sacrifice of an injunction declared with respect to the Darsapaurnamásíya sacrifice.

9. On this some one says:—It is declared that the brothers shall take the estate of a sonless person, and that they shall give to his wives property sufficient for their maintenance, as in the text, —"and shall allow maintenance to his wives till the end of their lives": but when the estate is not more than what is sufficient for maintenance, or even less than that, then the question occurs whether in such a case the brothers shall take the estate or the wife? And the text,—"The wife and the daughters also, &c." by showing the priority of the wife's right, indicates that in such a case, the wife alone shall take the estate.

This too is wrong; since in this view too, there would be the very same variableness in the precept as has previously been mentioned; for the phrase "shall take the estate", taken together with other texts in case the estate is small, would signify when construed with "the wife", shall take so much property as is sufficient for maintenance; but when construed with "the parents, &c.", shall take the entire estate.

10. If you ask, how then is the conflict to be reconciled? Listen:—Since there is no indication of order (of succession) in the texts such as,—"The father or the brothers shall take, &c."—therefore these texts are intended only to enumerate the heirs to the estate of a sonless person: but the text of Yogísvara which lays down,—"In the absence of the preceding one, every succeeding one is heir to the estate"—is relative to the order of succession: therefore although in the other texts there is no mention of the wife and the rest in a settled order, still there being no conflict in meaning (between these two sets of texts), the father and the rest

become heirs to the estate of a sonless person in default of the wife and the like.

The succession, however, of a wife that is suspected of adultery, is forbidden by Hárita,—"If a woman becoming widow in her youth be headstrong, a maintenance must in that case be allowed to her for the support of life." From this very text it appears that the widow who is not suspected of unchastity, is entitled to take the entire estate of the husband. Accordingly, it is said in the text of Sankha,—"or the senior wife": 'senior' means praiseworthy for good qualities, but not the eldest in age. Manu also declares seniority in the order of the classes,—"When regenerate men espouse wives of the same class as well as of a different class, the seniority, honor and habitation of those wives must be settled according to the order of the classes."[1] Hence a wife of the same class, although youngest in age and in respect of the date of marriage, is senior to one of a different class; also among those of the same class, the senior is one possessed of good qualities. Accordingly, Manu says,—"To all such married men, the wives of the same class, and not the wives of a different class on any account, shall perform the duty of personal attendance, and the daily business relating to acts of religion: for he who foolishly causes those duties to be performed by any other than his wife of the same class when she is near at hand, has been immemorially considered as a Chandalá though by birth a Bráhmin."[2] Also Yogísvara says,—"Among wives of the same class, one other than the eldest should not be employed in the performance of religious duties."[3] Also, a wife of the same class is indicated by the term *patni* itself, which signifies union through a sacrifice. But in the absence of a wife of the same class, a wife belonging to the class next in order, (may be employed in the performance of such duties): accordingly, Vishṇu says,—"If there be no wife belonging to the same class, then under the exceptional circumstance, a wife belonging to the class next in order (may be employed); but never (should) a regenerate man (perform (religious) duties with a wife of the Súdrá class:"[4]—the term "should perform" occurring in the previous text is to be construed with this text. Hence in default of a Bráhminí wife, a Kshatriyá wife may be the companion of a Bráhmana under that unavoidable circumstance; but neither a Vaisyá nor a Súdrá woman though espoused: a Vaisyá wife alone may become the associate of the Kshatriyá husband in default of a Kshatriyá wife: a Vaisyá may not have a Súdrá wife (for his companion in the performance of religious duties) but must have one of the same class; for a Súdrá wife is altogether excluded.

Accordingly a wife who is not suspected of unchastity, and who is of the superior class, shall take the husband's estate, and maintain her co-wives of the inferior classes. But the wives of the same

[1] Manu, IX. 85.
[2] *Ibid*, IX. 86 and 87.
[3] Yájñavalkya, I. 59.
[4] Vishṇu, XXVI. 3 and 4.

class with the husband shall take the estate dividing it amongst themselves. Hence the singular number in the term 'wife' is to be taken to be used with the intention of designating the class.

Hence the chaste wife of a sonless deceased person who was separated and not reunited, is entitled to take the entire estate: but of a sonless person who was unseparated or reunited, even the chaste wife is entitled to mere subsistence, by reason of the texts of Nárada and others, such as,—"If any one among brothers die without issue, &c." An unchaste widow, however, is not entitled even to maintenance, for it is declared,—"But if she behave otherwise, they may resume the allowance."[1]

As for the allowance of food and raiment even to the unchaste wives, as is declared in the following text, namely,—"Also let one act in the same manner towards even the degraded wives; food and raiment, however, should be allowed to them, if they reside in the vicinity of the dwelling house;"[2]—that however is to be explained as referring to the husband, consistently with what is ordained by Yogísvara after having premised the husband, as in the text,—"Deprived of her position in the family, clad in dirty clothes, living upon morsels barely sufficient for life, and humiliated, an unchaste wife shall be made to lie down upon the bare earth."[3] This too is to continue till the penance be performed. The banishment by also the husband, and the like mode of expiation for those women that do not out of perverseness perform the penance, will subsequently be considered by us.

The text, namely,—"The wife and the daughters also, &c."—is relative to the estate of one who was separated and not reunited; for partition (of a joint family) has previously been treated of, and partition after reunion, has, by way of an exception to all other cases, been subsequently dealt with, (by Yájñavalkya), consequently this is the only case which remains to be discussed. This is the opinion of most commentators, namely, Vijñánesvara, Lakshmídhara, the author of the Smritichandriká, Visvarúpa, Medhátithi, the author of the Madanaratna, &c.

11. The term 'sonless' used in the texts (on succession) such as,—"The wife and the daughters also, &c."—indicates the default of the grandson and the great-grandson also. The succession of the wife is proper only in default of male issue down to the great-grandson. For the duty of the grandsons too, to pay off the debts is declared in the text,—"The debts ought to be liquidated by the sons and grandsons (*puttra-pauttraih*);"[4] but if any one else were to take the estate in spite of the grandson, then the declaration of the grandson's liability to discharge the debts would be unreasonable; since by reason of the text,—"The heir to the estate of a person shall be compelled to liquidate his debts,"[5]—he alone who takes the

[1] Nárada, XIII. 26.
[2] Manu, XI. 188.
[3] Yájñavalkya, I. 70.
[4] *Ibid*, II. 50.
[5] Gautama, XII. 40.

estate is declared liable to discharge the debts. If it be argued that the grandson is included under the term 'gentiles', and as such may take the estate: then, in that case, there would be no use for the special provision regarding the grandson's liability to discharge the debts; since it would follow from the text alone, *viz.*,—"The heirs to the estate of a person shall be compelled to liquidate his debts." If it be said that the grandsons are liable, in the same way as sons, to liquidate the debts, although they do not get the grandfather's estate, then *a fortiori* it follows that when property is left by the grandfather, the right of any other than the grandson ought not to take place. The very same reason applies to the great-grandson also. Hence it is that the compound term *putta-puttraih* (rendered above into, by the sons and grandsons) bears the plural number: otherwise the dual number would have been used, or it would have to be assumed that the plural number is used in order to denote individuals. Thus the meaning is this:—the term *puttra-pauttra* may be taken to be a compound of *puttra* and *pauttra* and *puttra's pauttra;* and the plural number is accounted for by taking the term *puttra-pauttraih* to be the result of the uni-residual conjunctive compound of two similar terms, namely, *puttra-pauttrau* (bearing a dual number and signifying the sons and the grandsons) and *puttra-pauttra* (bearing a singular number and signifying the great-grandson); that is to say, by the sons, grandsons and great-grandsons: or the term "grandson" may include the great-grandson. Accordingly the different sorts of provisions for the liquidation of the debts by the great-grandsons, as distinguished from the same by the grandsons, and by the grandsons as distinguished from the same by the sons,—become consistent with reason. Otherwise there would arise the objection of assuming a peculiar provision so far as regards the great-grandsons.

Again, it is clear that the three descendants equally confer spiritual benefit by offering oblations in the *parva* occasions. Accordingly Manu says,—"To three (ancestors) must libations of water be given; for three is the funeral oblation of food ordained: the fourth is the giver of these; the fifth has no concern in them."[1] Also Baudháyana having premised son, grandson and great-grandson, says,—"The great-grandfather, the grandfather, the father, the man himself, the uterine brothers, the son begotten by a wife of the same class, the grandson and the great-grandson: these, partaking of undivided oblations, are called sapiṇḍas. Those who partake of divided oblations are called sakulyas. When there is male issue of the body, the estate must go to him." The meaning of this text is as follows:—Since a person (when deceased) partakes of the oblations presented to the three paternal ancestors beginning with the father, by reason of the union of oblations (effected through the ceremony called "sapiṇḍikarana"; and since the three descendants in the male line beginning with the son present oblations to that

[1] Manu, IX. 186.

person himself; and since he, who, while living offered oblations to an ancestor in the male line, partakes when dead, of the oblations presented to that ancestor, by reason of the union of oblations: thus the middlemost person who while living offered oblations to his ancestors, and when dead partakes of the oblations presented to them, becomes the object to whom oblations are presented by others that are living, and partakes with these latter while they are dead, of oblations presented (to him) by the daughter's son and the like. Therefore those to whom that person offers oblations, as well as those who partake of the oblations presented by him, as also those who present oblations to him, are, as partaking of undivided oblations consisting of the pinda, the sapiṇḍas of that person by reason of connection through the same pinda. To an ancestor who is fifth in ascent, the middlemost person who is fifth in descent, does not present oblations, nor does he partake of oblations presented to that ancestor; similarly the fifth descendant does not confer oblations on the middlemost person, nor partakes of oblations presented to him. Consequently the three ancestors beginning with the great-great-grandfather and the three descendants beginning with the great-great-grandson, that is, the three beginning with the fifth on both sides, who partake of divided oblations, and are not connected through the same pinda, are by the sage called sakulyas inasmuch as they are only connected through the *kula* or family.

This sapiṇḍa and sakulya relationship is declared with reference to succession, as it is mentioned in the chapter relating to that subject. But with reference to impurity, marriage, &c., those also that partake of the divided oblations (*i.e.*, the sakulyas) are considered as sapiṇḍas, by reason of the text,—"The fourth and the other ancestors who partake of the *lepa* or divided oblations and the father and the like to whom the pinda or oblation, is offered (are sapiṇḍas); to these the seventh offers oblations, hence sapiṇḍa relationship extends to seven generations."[1] And the text,—"The sapiṇḍa relationship, however, ceases in the seventh generation"[2]—is to be explained consistently with the text of Yájñavalkya, namely,—"After the fifth and the seventh from the mother and the father (respectively)"[3]—to mean that it remains in the seventh but ceases in the eight generation. Hence, as in the case of the unmarried females, the sapiṇḍa relationship extending over three generations, as is declared in the chapter on Impurity (occasioned by death, &c.),—is considered to be with reference to that alone; so it is to be deemed that this sapiṇḍa relationship (extending to the fourth degree) is relative to succession alone.

Kátyáyana, however, distinctly declares the succession of the son, grandson and great-grandson, as in the text,—"When a son dies unseparated, his son who has not received maintenance from the grandfather, shall be made participator of the heritage; he is

[1] II. Cole. Dig., 568, CCCCXXXV. [2] Manu, V. 60.
[3] Yájñavalkya, I. 53.

to get, however, the paternal share from the uncle or uncle's son: the very same share shall equitably belong to all the brothers: or his son also shall get: afterwards cessation (of succession) takes place."[1] But it is to be borne in mind that the cessation of the right of the great-grandson and the like who are further removed than the great-grandson,—as mentioned in this text, refers to them as sapiṇḍas; for as sakulyas they are certainly entitled to succeed according to proximity.

As for the text, namely,—"If among uterine brothers, one becomes father of a son, &c."[2]—that, however, refers to the performance of a son's duties such as the srâddha but not to the taking of heritage, and that lays down the restriction, namely, that when a brother's son is available for taking in adoption, none else should be made a subsidiary son: otherwise the mention of the brother's son after the brother, in the text enumerating the heirs to the estate of a sonless person and laying down the order of succession, would become inconsistent.

The three descendants beginning with the son confer the greatest amount of spiritual benefit on the three ancestors beginning with the father, consequently the estate conducing as it does to the benefit of the owner himself when taken by the sons, &c., continues, as it were, the owner's own by reason of the proximity of benefit. And the nearness on account of the spiritual benefit is consistent with reason: thus it is ordained,—"As soon as the eldest son is born, a man becomes father of male issue and is liberated from the debt he owes to his ancestors; therefore he (the eldest son) is entitled to get."[3]—Since, in the chapter on Partition of Heritage, the conferring of spiritual benefit is by the term 'therefore' set out as the reason; hence it is indicated that he alone is entitled to get the estate, on whom the estate having devolved conduces to the greatest amount of spiritual benefit of the deceased owner, and that proximity in this way is to be accepted as a general rule and reasonable.

That the son and other descendants confer the greatest amount of spiritual benefit is set forth in many passages of the Sruti, the Smriti, and the Purânas. On this subject there is the following Sruti:—In the anecdote of Harischandra in the Bahvrichabrâhmana it is said that Nârada being asked by Harischandra thus,—"Explain to me, O Nârada! what is attained by a son, for those that are learned as well as those that are not, are solicitous for sons,"—enlightened him by ten verses delineating the importance of a son: he being asked in one verse answered in ten, thus,—"If the father sees the face of his living son after it is born, he transfers his debts to it and attains immortality, &c." The following passages of the Smriti are

[1] II. Cole. Dig., 241, LXXIX. [2] Manu, IX. 182.
[3] Manu, IX. 106.

to the same effect. Manu and Vishṇu say:—"Since a son delivers the father from the infernal region called *put*, therefore he is named the *put-tra* (the deliverer from the *put*) by the Self-existing himself."[1] Sankha and Likhita say:—"Seeing the face of a son in his lifetime, the father becomes liberated from his debt to the ancestors, and becomes entitled to go to heaven by means of the son born, after transferring that debt to him. The sacred fire, the three Vedas, and all the sacrifices with fees to the priests, are not equivalent even to a sixteenth part of the eldest son born."[2] Manu, Likhita, Vasishtha and Hárita say:—"By means of a son one attains the heavenly regions, by a grandson acquires immortality, and by a son's grandson attains the solar region."[3] Yájñavalkya declares:—"As the blissful regions and the heaven are attained by means of sons, grandsons and great-grandsons, therefore wives should be taken and guarded well."[4] In the Puránas, again, there are many anecdotes laudatory of the son, &c.

Hence it is established that it is only in default of male issue down to the great-grandson that the wife takes the estate of the husband who was separated and not reunited.

12. Jímútaváhana maintains that the above reconciliation is not tenable by reason of conflict with the text of Brihaspati. Thus he says:—"In the text,—'When brothers who have been separated dwell together through affection, then in the re-distribution among these there is no specific deduction for seniority: if any one of them dies or anyhow retires, his share is not extinguished but belongs to his brother; if there be any sister, she is entitled to obtain a share of it: this is the law regarding the estate of a childless person who is destitute of the wife and the father: of the reunited, however, if any one acquires wealth by science, valour and the like; two shares are to be allotted to him, and the rest are equal sharers'[5] —reunion is mentioned in the commencement as well as in the concluding portion; therefore it must be admitted that the intermediate portion, namely,—'his share is not extinguished but belongs to his brother'—refers to the case of reunion: also it is declared that, 'this is the law regarding the estate of a childless person who is destitute of the wife and the father'; hence it appears that the right of the reunited uterine brother takes effect in default of son, daughter, wife and father; how then can a brother debar the wife? Moreover the portion, namely, 'his share is not extinguished', becomes reasonable, if the brother was unseparated or reunited, as there might be an apprehension of the extinction of his share by reason of the mixture; but if the brother was separated and not reunited then his estate being separate, there cannot be any apprehension of extinction: from this reason as also from indication it appears that the above text refers to a case of reunion.

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[1] Manu, IX. 138.
[2] Vishṇu, XV. 44.
[3] II. Cole. Dig., 420, CCCVI & CCCVIII.
[4] Manu, IX. 137; Vasishtha, XVII. 5.
[5] Yájñavalkya, I. 78.
[6] Brihaspati, XXV. 73—77.

"Moreover, is it by reason of any other clear text or by reason of any strong argument that the texts of Sankha and other sages, which indicate the right of the brothers to be preferable to that of the wife, are maintained to refer to the estate of one who was unseparated or reunited? The first is not tenable, by reason of the absence of any clear special text. The text, however, which will be cited hereafter, namely—'Of a reunited (co-heir), however, a reunited (co-heir)'—lays down a special rule when the succession opens to brothers: it does not convey the contended meaning. The text of Brihaspati, however, indicating as it does the succession of a reunited uterine brother in default of those beginning with the son and ending with the father, rather shows that the texts in question are relative to the estate of one who was not reunited. Neither is the second tenable. For argument (if any) must be said to be this: in a family joint or reunited, whatever property belongs to one member belongs also to others; therefore although the right therein of a deceased member is extinguished, the right of the survivors subsists therein; hence the devolution on them is reasonable, but not the supposition of any other heir. But this is not consistent with reason. For even when the family is joint or reunited, the right of each member extends to a fractional portion though unascertained; but neither an exclusive right of each nor a joint right of all the members together extends to the entire property, as in that case there would be multiplicity in assuming many times the accrual and extinction of right.

Moreover, from the previously cited texts of Gautama and others, such as,—"Union (of husband and wife) arises indeed from marriage,"—it appears that the wife's right to the property of the husband arises from marriage: but there is no authority for assuming that that right ceases on the death of the husband if he was unseparated or reunited, and that it does not cease in other cases. When there are sons, &c., then it is only on the authority of the texts propounding their right that the extinction of the wife's right is assumed. It cannot, however, be contended, that in this case too, the extinction of the wife's right is to be assumed by reason of the texts laying down the right of a reunited or unseparated brother. Because any text to that effect is not met with; and because it cannot be ascertained by reason of the fallacy of mutual dependence; for if it be established that the wife's right is extinguished on the death of the husband who was reunited or unseparated, then the texts laying down the right of the brother may be held to be relative to that case; again if it be established that the texts laying down the right of the brother are relative to that case, then the extinction of the wife's right may be assumed. Hence it is that in the texts of Yogisvara, Vishnu and others, only the default of sons is mentioned, but not separation nor the absence of reunion. It cannot be argued that these are, by implication, enumerated, inasmuch as partition has previously been mentioned and reunion has subsequently been treated of; for if that were so,

then the term 'sonless' also need not be set out, since when the primary and the secondary sons have been separately mentioned to be heirs, then also it may appear by implication that the text is relative to a different state of things. The term 'sonless' may become significant by interpreting it to indicate the following restriction, namely, that these alone are, in this very order, heirs to a sonless person: and this interpretation is equally applicable to the other two cases (namely, jointness or reunion). But it does by no means follow that the text is relative to the case of separation. It has already been said that the text regarding reunion is intended for laying down a special rule when the right of the brother takes effect, and not for excluding the wife and the like.

"Besides, if the texts of Sankha, Likhita, and others related to a brother who was joint or reunited, then what is the meaning of this, *viz.*, that the estate of such a sonless person devolves on a brother of that description, and in his default the parents shall take? Then again the question arises, whether the parents who have been separated and not reunited, or who are joint or reunited shall take? The first alternative is not tenable; for such parents are debarred by the wife, how then in default of brothers, can their right be signified in preference to the wife? Neither is the second alternative tenable; for the text would be useless, since no one disputes that the parents who are joint or reunited are entitled to take. Moreover, as in the case of the estate of one who was separated and not reunited with the father or the brothers, the father succeeds in preference to the brothers,—by reason of his being the author of (the deceased son's) existence, by reason of the declaration of identity (of father and son) as in the text,—'A man himself indeed is born as the son, the son is the same as the father himself,' by reason of the authority of the father over the person, and property of the son, by reason of the deceased son's participation, through the union of oblations effected by the ceremony of sapiṇḍi-karana, in the two oblations presented by the father to the grandfather and the great-grandfather, and by reason of the incompetency of the sons to present oblations in the *parva* occasions while the father is alive;—so it is reasonable that he should succeed in other cases. Or there being no distinction between jointness and reunion, the co-equal right (of the father and the brothers) is reasonable, but it is not reasonable to say that the father's right takes effect on failure of the brothers.

"Moreover, the adjectives 'unseparated' and 'reunited' cannot properly be applied to (both) the parents, for there cannot be partition with the mother, and so the adjective 'unseparated' (as applied to the mother) would be meaningless. Hence it follows that there can neither be reunion (with the mother), for it must be preceded by partition. Accordingly, Brihaspati says,—'He who having been separated dwells together again through affection with the father, brother or the paternal uncle, is called reunited

with him.'[1] From this text it appears that the father, brother and the paternal uncle who are from their birth likely to be united as regards the property acquired by the father and the grandfather, they alone may become reunited when having been once separated they annul through mutual affection the previous partition with an agreement to the effect that the wealth which is mine is thine and what is thine is mine, and remain as one householder as before in commensality and undivided (in any transaction). Those, however, who are unlike these are not to be considered reunited by reason of the mere union of property; for if that were so, then the term 'reunion' would be applicable to a joint stock company of traders. Accordingly the term 'reunion' is not applied to brothers who manage their estates holding them joint for the sake of convenience, but are without the stipulation based upon affection. Hence it becomes difficult (for the adversary) to maintain the mother's right of succession in spite of the brother.

"Hence it is perfectly consistent to hold that in default of descendants down to the great-grandson, the widow alone does without distinction succeed to the entire estate of her deceased sonless husband. But it is not reasonable to assume what is not specified in any text, namely, that the wife succeeds if the husband was separated and not reunited. Jitendriya and others also support the same view. In default of descendants down to the great-grandson, she too confers a great amount of spiritual benefit upon the husband by performing the sráddha and the like. This appears from the following text of Manu, *viz.*,—'The wife alone shall offer oblations to him and take his entire estate.'[2] Vyása also declares,—'When the husband is dead, a chaste wife leading a life of austerities and performing daily oblations shall respectfully offer handfuls of water to her husband and shall day by day worship the gods and entertain the guests; also being devoted shall daily worship Vishṇu, shall present gifts to worthiest Bráhmins for the purpose of augmenting religious merit; and shall, oh auspicious! observe the various kinds of fasting enjoined by the Sastras: oh sweet-faced! the wife who is constantly devoted to a religious life saves both herself and her husband abiding in the other world.'[3]—Hence, because the wife also saves the husband from the infernal regions, and because by leading a vicious life through indigence (the wife who is) half the body of the husband by reason of the declaration to that effect, causes the husband also to fall, for the same is indicated in texts like the following,—'whose wife drinks wine, &c.',—therefore the estate being taken by her becomes beneficial to the husband; consequently the wife's succession to the husband's estate in preference to all others is consistent with reason.

"The construction to be put upon the texts of Sankha and

[1] Brihaspati, XXV. 72. [2] II. Cole. Dig., 535, CCCCVII. [3] II. Cole. Dig., 528, CCCC.

other sages is, however, far-fetched:—The estate of a person who is deceased and sonless, *i.e.*, destitute of male issue down to the great-grandson, let the eldest wife, *i.e.*, the wife that is preferable, take; in her default and in default of the daughter and the daughter's son, let the parents take; in their default it goes to the brothers': the term *tadabhávé* (in his, her or their default) occurring in the middle (of the text of Sankha and others) may be construed with what precedes or with what follows, for such a construction is not incorrect, and the reason for it has previously been mentioned. The text of Nárada, namely,—'If any one of the brothers die without issue, &c.'—and other texts to the same effect are relative to a wedded wife other than a *patni*; since in these texts the term *strí* is used, whereas in the text of Sankha and others, the term *patni* is used. And it has been previously shewn that all married women do not acquire the status of the *patni*. Accordingly in another text of Nárada himself, namely,—'But the king adhering to his duties shall (take the estate and) allow maintenance to his *strís*; this is pronounced the law of inheritance excepting in the case of Bráhmins,'[1]—it appears from the use of the term *stri* that maintenance only is to be allowed to the wives of a person other than a Bráhmin, who do not hold the rank of the *patni*. But the wives of a person other than a Bráhmin, who hold the rank of the *patni*, are entitled to take the entire estate of the husband. Thus Brihaspati says,—'The estate of the Kshatriyás, Vaisyás and Súdrás who are sonless and destitute of the *patni* and brothers, the king shall take, for he is the lord of all.'[2]—The term 'destitute of the *patni* and brothers' indicates the failure of all the heirs down to the fellow-student; because the order of their succession being settled, the king cannot intervene between them, and because in the previously cited text, Vishṇu having mentioned the heirs down to the fellow-student, says,—'in their default it goes to the king excepting the property of a Bráhmin'."[3]

13. As to the above view (of Jímútaváhana) what is to be remarked is this. What is the objection to the reconciliation, namely, that the texts of Nárada, Sankha and others are relative to jointness or reunion? Is it in conflict with any reason, or is it in conflict with any text? There is not, however, conflict with any reason, for there is not any reason against it. But rather there is a reason in support of it. Since when the husband dies unseparated, he had no (specific) share at all, then what will the wife take? And if re-united, then although his share had been specified, it was lost by reason of the accrual of a common right over again. Nor can it be argued that there is certainly his undefined share although it is the subject of a common right. For although this be admitted, still on the death of one by whose relation the right became common, the succession of him alone whose right subsists is proper, but not the supposition of the accrual of another's right. If it be

[1] Nárada, XIII. 51 and 52. [2] Brihaspati, XXV. 67.
[3] Vishṇu, XVII. 13.

said that, by reason of the text of Gautama, *viz.*,—"From marriage indeed arises union as regards religious acts, their fruit and the acceptance of chattels"—the wife's right accrues to the husband's share though undefined, wherefore then is the extinction of that right assumed while she is alive? The answer is:—Her right is only fictional but not a real one: the wife's right to the husband's property, which to all appearance seems to be the same (as the husband's right) like a mixture of milk and water, is suitable to the performance of acts which are to be jointly performed, but it is not mutual like that of the brothers; hence it is that there may be separation of brothers, but not of the husband and wife; on this reason is founded the text, namely,—"Partition cannot take place between the husband and the wife;"[1] therefore it cannot but be admitted that on the extinction of the husband's right the extinction of the wife's right is necessary: hence it is to be assumed (by you) either that the wife's right accrues to the property of the husband who was joint or reunited (on his death), or that the existing right of a co-sharer who is joint or reunited is not common; the latter alternative alone cannot but be admitted (by you) by reason of simplicity. Nor can the wife herself be a party to partition, as there is no authority establishing the same. Nor can it be said that these very texts (which lay down the wife's succession) establish it. Because it is not settled as to what case these texts are applicable, and because these may as well be taken to refer to the estate of one who was separated and not reunited. Accordingly, the fallacy of mutual dependence (mentioned by Jímútaváhana,) is out of the question. Since the fallacy cannot interrupt the enquiry (into the subject to which the texts are applicable); and since when the enquiry is over, the subject to which the texts are applicable has already been determined.

As for what has been said in the passage, namely,—"For even when the family is joint or reunited, &c.," that is not capable of weakening our contention. For even if the right of each member be admitted to extend to a fractional portion though unascertained, still it is established by a different reason, that the texts (laying down the wife's succession) cannot refer to a case of reunion. Nor can it be argued that there is no authority for holding that the texts, such as,—"The wife and the daughters, &c.,"—refer to the estate of one who was separated and not reunited, while there is nothing to that effect in the texts themselves. Because there being no other reasonable reconciliation of the conflicting texts of Nárada and others, the inference of a meaning, which is based upon the reason which has previously been set forth is itself the authority. And it will subsequently be stated that no other reconciliation is reasonable.

Nor can it be argued that just as (you say that) there are no terms used in the text itself to show that it is relative to the estate

[1] Ápastamba, II. 6, 14, 16.

of a person separated and not reunited, because it appears by implication that the text,—"The wife and the daughters, &c."—refers to that case by reason of partition having previously been dealt with, and by reason of reunion having been subsequently treated of: that, therefore, for the same reason the term 'sonless' also ought not to have been mentioned (in the text), because the text,—"The wife and the daughters, &c."—being set about after having discussed the subject of partition between the primary and subsidiary sons, it would have appeared (by implication) that the text refers to the estate of a sonless person. Because the term ('sonless') is used for the purpose of indicating a meaning which has not been expressed by Yogísvara in any other text, but which meaning is mentioned in other Institutes by texts like—"The aurasa or legitimate son alone is the master of the paternal wealth,"[1]—and —"Not brothers nor parents but the sons are entitled to the property of the father."[2] Otherwise there might be a doubt that as on partition during the father's lifetime or after his death, his wives are entitled to shares even when there are sons, so the same would be the case in this instance too. If it be said that there is no occasion for such a doubt, the text being declared after the subject of partition amongst sons has been finished; then in other Institutes the declaration of separate texts, such as,—"The *aurasa* or legitimate son alone is the master of the paternal wealth,"—and—"Not brothers nor parents but sons are entitled to the paternal wealth," for establishing the absence of the right of the wife and the rest when there are the legitimate and subsidiary sons,—would be altogether useless. And the ground on which this objection may be removed (by you), namely,—that in the Institutes of law, a proposition, though it may be deduced by means of the rules of interpretation, is still for the purpose of clearness separately enunciated,—may with greater reason be applicable to a single term, *viz.*, ('sonless'). If it be said that wherefore have not the terms 'separated' and 'not reunited' also been for the sake of clearness inserted (in the text of Yájñavalkya to qualify the 'sonless person')? The answer is, because the sages had their own independent will. Besides, agreeably to the maxim that when there is an effect (in the shape of erroneous knowledge) its reason is investigated,—where there is a separate text of law embodying a meaning which is deducible by the rules of interpretation (from other texts) then, because what is so deducible ought to be maintained, therefore it is said that the separate text is intended to elucidate the same so that the text may not be considered useless.

As for what has been said, namely, that the text,—"Of a reunited (co-heir), however, a reunited (co-heir)"—is intended to lay down a special rule when the succession opens to brothers, and not to exclude the wife, &c.;—that too is erroneous; for it is opposed to the term 'however'; and because in that part of the

[1] Manu, IX. 163. [2] Manu, IX, 185.

Institutes (of Yájñavalkya) each succeeding text is put by way of exception to what has previously been laid down; hence the term 'however' (has been inserted) in every text, and the text—"An important, &c."—(which succeeds the above text) is declared embodying an exceptional rule for excluding, by reason of importance and the like, from inheritance all the sons and the rest who have previously been declared to be heirs. Accordingly, in the Mitákshará these texts have been introduced and explained in this way by Vijñánesvara.

In the passage "Besides, &c."—the right of the parents in default of brothers, as laid down in the text of Sankha and Likhita has been refuted (by Jímútaváhana) having put his argument in an alternative form. That too is very weak; for our view cannot be questioned in that way, inasmuch as, like you, we can as well by reserving the order explain that text to be relative to parents who are separated and not reunited.

As for what has been said in the passage "Moreover, &c."; that is to be passed by, as being of the same kind with the preceding.

As also for what has been said in the passage "Moreover, &c.";—that too is not a valid objection, because although the adjectives (unseparated and reunited) be not applicable to the mother (included under the term 'parents') still they may properly be construed with the father (comprised by the same term). But in reality, though directly there can be no partition with the mother, still reunion (of the mother), preceded by the particular stipulation based upon affection, may take place with sons, since she too may get a share by the choice of the father at a partition during his lifetime, and since participation (of a share) by her at a partition after the death of the father is distinctly declared. Nor can it be argued that this is contrary to the text of Brihaspati, namely,—"He who having been separated, &c."; that hence it is said by the author of the Mitákshará that reunion does not take place with any person indifferently, but with the father, brother or uncle, and the above text is cited by him in support of this view. Because, if that were so, then reunion with the daughter's son and the like, which is recognised by the practice of all people, would become improper. Therefore of those only amongst whom there may be mutual partition, the mutual union preceded by it (partition), and based upon the particular stipulation, is reunion, and not by the mere mixture of each other's property as in the case of traders. This is what is intended by the text of Brihaspati, but not the exclusion of the mother and the like. For if the exclusion of the mother, &c., were the purport of the text of Brihaspati, then the objection would arise that the text embodies a prohibition in the shape of an injunction, which is liable to three exceptions. It is for this reason that the particle 'or' is repeated in the text of Brihaspati to show that no value is to be attached to the enumeration. So in

the Ratnakara, Chandesvara says,—The particle 'or' shows that no importance is to be attached to the enumeration; hence we get what is recognised by all people, namely, the reunion of one dwelling together after partition with the paternal uncle's son who was a co-sharer (before partition). Also Váchaspati says to the same effect. As for what he (Váchaspati) says, namely, that reunion is, by reason of simplicity, defined to be only the union together of those who had separate properties; the fact of there having been previous partition is not the condition of it nor is mutual assent its foundation:—that is not tenable; because it is opposed to the term 'again'; and because the term 'reunion' would be applicable even to partition, for if right by birth be not admitted, then on (the occasion of) partition there is union of those having distinct properties: otherwise, if it be said that both (the definitions) being deducible from the text, the one maintained by the other side is equally valid, then it would exclude the reunion with an ascendant such as the father, although such reunion is recognised by all people. Also the author of the Mitákshará by saying "not with any person indifferently", intends not to exclude the mother and the like, but only to lay down the restriction, that reunion must be preceded by partition and based upon the particular stipulation, and so to exclude the union consisting in the mixture of chattels in any way.

As for what you said, namely, that the object of the text, *viz.*,—"Of the reunited (co-heir), however, a reunited (co-heir), &c."—is to provide for special rules governed by the circumstance of reunion, the fact of being uterine, and so forth,—(rules) which are to apply when the succession opens to the brothers:—that, however, is very unreasonable; since there is no reason why that text should not be applicable to other gentiles such as the father. And this will be discussed at length where that subject (reunion) itself is dealt with.

Hence there is no defect (attributable to the reconciliation made by us) in the shape of a conflict with any reason.

Nor can it be argued that there is a conflict with the text, on the ground that when he (Brihaspati) has (in his text) qualified the reunited person also by the adjective "devoid of the wife and the father", then it follows that the right (of a brother) to the estate of reunited brothers takes effect only in default of the wife and the father, in the same way as in default of male issue. Because the succession of the wife to the estate of her reunited husband is expressly forbidden by Nárada in the text,—"The sages hold that amongst the reunited brothers, however, that share (which would go to the husband on partition) she is not entitled to."[1] Also in the reading of this text, as adopted in the Kalpataru, namely,—"The share of one of the reunited brothers, however, is ordained to be theirs alone"—the exclusion of the wife and the

[1] Nárada, XIII. 24.

like certainly follows from the term 'alone'. Nor can it be argued that if the text of Nárada, namely,—"Among brothers if any one die, &c.,"—be, by virtue of the context, interpreted to refer to a case of reunion, then there would be tautology, since the same thing is expressed in the text,—"The sages hold, &c.;" hence, because the term *'strí'* is used in this text (of Nárada) and the term *'patni'* is used in other texts (which lay down the succession of the wife in preference to the brothers, &c.), therefore the reconciliation which alone is preferable is that the latter texts refer to the *patni* or the lawfully wedded wife, (and the previous text of Nárada to other wives). Because the objection of tautology is of no effect, for what are intended to be laid down (in the first text of Nárada) are only the impartibility of the wives' peculiar property and their maintenance, and this subject is introduced by repeating what has been previously ordained (in the second text); and because it would be unreasonable to prohibit the succession of the other wives to the estate of their husband, as their succession cannot follow from texts like,—"The wife and the daughters, &c."—in which the term *'patni'* is used. Again, agreeably to your opinion, the term 'through covetousness for the heritage' in Vasishṭha's text, which qualifies the term 'appointment' would become unaccountable; for if the wife be first of all entitled to take the estate of the husband, who is destitute of male issue, without distinction arising from jointness, separation or reunion, then how can there be the acceptance by the wife of appointment through covetousness for heritage, that it is prohibited? Agreeably to our opinion, however, by virtue of the texts of Nárada and others, the wife has no concern with the estate of the sonless husband while there is a brother, joint or reunited, but her right may arise through a son alone, hence the acceptance of appointment through covetousness of inheritance may take place, and so it is prohibited. Nor can it be argued that inasmuch as in your opinion a wife other than a *patni* is not entitled to the inheritance, her acceptance of the appointment, proceeding from covetousness of wealth is prohibited, and not what we say might have happened (but for the prohibition). Because the *patni* alone being premised there, it would be unreasonable to say that it refers to a wife other than the *patni*. Accordingly, Dháresvara and others have set forth this very text of Vasishṭha as an authority for holding that the text,—"The wife and the daughters, &c."—refers to a *patni*, willing to accept the appointment. Hence, there is the prohibition of the wife's succession to the estate of the reunited husband, by virtue of the texts of Nárada and Vasishṭha; there is again the prohibition of even the uterine brother's succession to the estate of a reunited brother, when there is the wife, by reason of the declaration in the text of Brihaspati, namely,—"This is the law regarding the estate of a person who is childless and destitute of the wife and the father:"[1] this conflict which necessarily arises, and ought to be anyhow got

[1] Brihaspati. XXV. 75.

rid of by referring the texts to distinct cases, but which has not been got rid of by others, is thus reconciled,—Although it would follow, regard being had to the subject treated in the context, that the term 'reunited person' is to be supplied as the substantive to which the adjective 'destitute of the wife and the father' relates, still it is opposed by the necessity of the adjective referring to one not reunited, by reason of the contradictory texts of Nárada and others; because the context cannot lead to a conflict of precepts. Nor can it be said that since the pronoun 'this' relates to the law of succession to the property of a reunited person, with regard to which a particular rule is laid down in this part of the text, (*viz.*, "This is the law, &c.",) therefore the adjective 'destitute of the wife and the father', like the adjective 'childless' qualifies the reunited deceased (co-sharer); that hence the conflict is not between the precept and the context, but between the two precepts. Because, though the pronoun relates to the succession to the estate of a reunited (co-sharer), still (the meaning may be taken to be) 'this' same law of succession, which obtains with regard to the estate of a reunited co-sharer, is applicable even to the estate of one not reunited who is destitute of issue, and has not the wife or the father surviving him, (that is to say) let not a uterine brother, however, take the estate of a deceased childless brother, who was separated and not reunited, when there is the wife or the father, but let the wife or the father take: the proposition may be reasonably explained in this way. Thus the word *cha* also is to be explained as suggesting that the term 'not reunited' which is not expressed is understood. Hence also, if the subject be taken to be disjoined by this proposition relative to the estate of a brother not reunited, then also the use of the term 'reunited' becomes significant, in the succeeding text, namely,—"Of the reunited, however, if any one, &c."; otherwise it would be useless, for the same meaning would appear here too from the context. Accordingly in the third chapter (of the Mimámsá) it has been held while dealing with the topic of the *nivids* (or invocations of gods at the time of offering sacrifices to them) that the putting on of the upper garment (which is subsequently enjoined) is not subservient to the chanting of the hymns for kindling the holy fire, by reason of the topic of these hymns, which is separated (from the topic in which the putting-on of the upper garment is enjoined) by the different topic of the *nivids*,—forming a minor topic; but is subservient to the whole sacrifice of Darsapaurnamása which is the comprehensive topic (and includes the minor ones): and it is maintained by Bhatta that the subsequent attributes (of the hymns), called kámyas are enjoined by repeating the hymns for kindling the holy fire, on account of their distance, in the same way as the twelve propitiating hymns. But in reality, the succession of the sister, in default of a uterine brother, to the estate of a reunited brother, is indicated by the text,—"if there be any sister, &c.",—and this alone which immediately precedes is referred to by the pronoun 'this' occurring in the sentence "this is the law, &c."; and in this interpretation

there is no conflict whatever. It has been so explained in the Chandriká also.

The succession, however, of the widow to the entire estate belonging to her sonless husband who was unseparated is opposed to what is declared by Kátyáyana; for he says,—"But when the husband dies unseparated, the wife is entitled to food and raiment; or (*tu*) she gets a portion of the estate till her death."[1]—The particle *tu* bears the sense of 'or'; hence the meaning is this:—Either she may directly receive food and raiment, or till her death, *i.e.*, during her life, she may get so much share of the property as is sufficient for her maintenance and for the performance of necessary religious ceremonies which a woman is competent to perform. By reason of the declaration "a portion of the estate till her death", the position that the widow gets the entire estate of the unseparated husband, fails. Nor can it be argued from the use of the term *strí* (in the above text), that this text refers to a wife other than a *patni*. Because the adjective 'unseparated' would be meaningless; and because it is ordained that a sonless wife other than a *patni* is entitled only to maintenance, even when the husband was separated. Accordingly, Brihaspati having said (in the previous text, "Even when partition has been made",—goes on to declare,—"must allow (her) subsistence, or if she choose, a share of the field".[2] This text has been explained in the Smritichandriká, thus:—The term 'subsistence' includes food and raiment; wealth sufficient for the same, or agreeably to her own choice a share of the field equal to that purpose, must be allowed to a widow other than a *patni* who is entitled to the estate of the husband, by the brother, &c., taking the estate: the term 'must' shows the necessity of giving the allowance. To this very subject refers the following text of Nárada,—"All the chaste widows should be maintained with food and raiment by the eldest (brother of the husband), or by the father-in-law, or by any other gentile"[3]—*i.e.*, whoever takes the husband's estate: maintenance is to be allowed by reason of succession to the estate.

By the term 'chaste' (in the above text of Nárada) it is shewn that in all (the texts) the maintenance of the chaste widows alone is intended. But that too, even the *patnis* that are unchaste, are not entitled to, by reason of what is ordained in the latter part of the text of Nárada, previously cited, *viz.*,—"but if they behave otherwise, the brothers may resume their allowance",—and in other texts. Accordingly, also, Brihaspati says that what has been given by the father-in-law, &c., to the chaste for their maintenance, should not be resumed even by other kinsmen, thus,—"But such immoveable or other property, as has been given by the father-in-law to the wives (of his sons) can, on no account, be resumed by the kinsmen here."[4]

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[1] Not found.
[2] Brihaspati, XXV. 54.
[3] Nárada, XIII. 26.
[4] Brihaspati, XXV. 86.

But even what has been given to those that prove to be of a different character may be resumed. This is declared by Kátyáyana,—"(A woman) complying with the wishes of the venerable protector, is entitled to enjoy the allotted share: if she does not comply with his wishes, then she should be reduced to the livelihood of a slave. She who is bent upon injurious acts, is shameless or spendthrift or adulterous, is not entitled to even woman's property."[1]—By the expression 'is not entitled', two meanings are conveyed, namely, that even what is sufficient for maintenance should not be given, and that even what has been given should be resumed from one that proves to be such.

As for the text of Sruti, namely,—"Therefore women are devoid of the senses (*anindriyáh*) and incompetent to inherit,"—and for the text of Manu based upon it, namely,—"Indeed the rule is that women are always devoid of the senses and incompetent to inherit;"[2] these are both to be interpreted to refer to those women whose right of inheritance has not been expressly declared. Haradatta also has explained (these texts) in this very way, in his commentary on the Institutes of Gautama, called Mitákshará. But some (commentators) say that the term 'incompetent to inherit', implies censure only, by reason of its association with the term 'devoid of the senses'. This is not tenable; because it cannot but be admitted that the portion, namely, 'incompetent to inherit', is prohibitory and not condemnatory, for it cannot reasonably be held to be an absolutely superfluous precept inasmuch as the taking of the heritage (by women) may take place under the desire (for property). But the portion 'devoid of the senses' is to be somehow explained as being a superfluous precept, and purporting the dependence (of women) on men; for the negation, what is contrary to the nature, meaning as it does of things, is objectionable. Hence what has been said above forms the best interpretation. The venerable Vidyáranya, however, has, in his commentary on the institutes of Parásara, explained the above text of Sruti in a different way:—The term 'incompetent to inherit' indicates that the wife is not entitled to a share in case of her retirement to a forest; the term *anindriyás* (rendered above into 'devoid of the senses') embodies the reason for the same; for it appears from the text, *viz.*, —"The *soma* juice indeed is the *indriyá*,"—that the term *indriyá* signifies also the *soma*, hence those that are not entitled to it are *anindriyás*, *i.e.*, not entitled to taste the *soma* juice: the text being laudatory of the retirement of the wife into a forest (on the death of the husband).

Thus ends the discussion of the wife's right.

PART II.

1. In default of the wife, 'the daughters' are entitled to take the estate of a sonless person who was separated and not reunited.

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[1] II, Cole Dig., 602, CCCCLXXXIV. [2] Not found.

Accordingly, Manu says,—"As a man is himself so is his son, a daughter is alike to a son; when there is himself in the shape of a daughter wherefore should any other take the estate?"[1] Also Brihaspati says,—"A daughter like a son springs from every limb of the father; therefore why should another person take the estate of the father?"[2] Here it is to be observed that although a daughter is directly begotten by the father, still by the terms 'alike to a son' and 'like a son', a daughter is declared to be similar to a son, inasmuch as the constituent elements of a son's body are derived mostly from the limbs of the father, and those of a daughter's body, mostly from the limbs of the mother; for it is so established in the Institutes of law as well as in Physiology by passages like the following,—"A male child is generated when the virile seed exceeds, and a female child when the uterine blood prevails."[3] The term 'himself' (in the text,—'when there is himself in the shape of a daughter') signifies, similar to a son who is even as the father himself by reason of the text,—"Indeed a man is himself born as a son;" "when there is himself in the shape of a daughter", means, in preference to a daughter.

It may be asked that although the reason as set forth in the above texts indicates the daughter's succession to the estate on failure of the legitimate or *aurasa* son, still on what principle does the succession of the daughter take effect in default of the subsidiary sons and the wife? The answer is, that that too has clearly been set forth by Nárada for the benefit of the dull; thus he says—"In default of the sons, however, the daughter (succeeds) by reason of similar lineage;"[4]—this text again has been explained by Nárada himself, thus,—"A son as well as a daughter are both perpetuators of the father's lineage." The intention is this: Both the son and the daughter are the parents of the father's descendants called (respectively) the *pauttra* or the son's son and the *dauhitra* or the daughter's son; hence their capacity for perpetuating the lineage being similar, the daughter too, like the son, has the right of succession. But a son's son and a daughter's son are not equal in themselves, hence the equality is intended to have reference to their acts. The acts again do not consist in liquidating the debts or taking the unobstructed heritage, for a daughter's son has no concern with these while there is a son's son, by reason of the texts, *viz.*:—"The debts are to be liquidated by sons and son's sons,"—and—"Therein the ownership of both the father and the sons is equal,"—the latter text being relative to the grandfather's property. Hence the acts here are spiritual ones, namely, the performance of the sráddhas, by reason of the text of Vishṇu, namely,—"In the performance of the funeral obsequies of the ancestors a son's son and a daughter's son are alike."[5] Thus a daughter that confers only spiritual benefits through the instrumentality of her son is inferior

[1] Manu, IX. 130.
[2] Brihaspati, XXV. 56.
[3] Not found.
[4] Nárada, XIII. 50.
[5] Vishṇu, XV. 47.

to a son that renders benefits by means of his sons and confers spiritual as well as temporal benefits. Nor can it be said that thus a daughter who is begotten by a man himself is nearer than the wife, and as such is entitled to take the estate in preference to the wife. Because the wife who by her companionship assists the husband in the performance of the ceremonies enjoined in the Vedas, such as the consecration of the sacred fire, and who renders both spiritual and temporal benefits by being the means of lineage, and by being the instrument of satisfying the human end called desire, and who is extolled as half the body of the husband,—is certainly superior to a daughter. Hence the term 'in default of the sons' is to be taken to indicate the failure of the wife also, by reason of the previously cited (Pt. I, § 4) text of Vishnu and this text of Yogísvara (Pt. I, § 1).

Although the father who is the object to whom funeral oblations are addressed by the son, and who as such conduces personally to the spiritual benefit of the son, is nearer than a daughter, and hence the text, *viz.*,—"The father or the brother shall take the estate of a sonless person"—should properly be applied, previously to the daughter's succession; still she is preferable by reason of the proximity of body as ordained in the text,—"when there is himself in the shape of a daughter, &c.",—and it is in her default that the above text is to be applied, because from the use of the particle 'or' (in the above text), it appears that no stress is intended to be put on the order.

2. Jímútaváhana, however, while discussing the daughter's succession, says:—"Since the perpetuating of the lineage is set forth as the reason for her succession; and since, of the descendants he who offers oblations benefits the deceased, but he who presents no oblation does not confer any benefit, and there being no distinction between the failure of offspring and having offspring other than those that conduce to the spiritual benefit; hence a daughter who has or who is likely to have male issue is entitled to the inheritance; and consequently the opinion of Díkshita is to be accepted, *viz.*, a daughter who is barren or who is widowed or who is mother of daughters alone, and as such, is not likely to have male issue, is not entitled to succeed."

This too is open to criticism; since he himself maintains the preferential right of the maiden daughter in the passage,—'First of all the maiden daughter alone succeeds to the estate of the father'—upon the authority of the following text of Parásara, namely,—"Let the maiden daughter, and in her default the married daughter, take the property of a sonless deceased person,"[1]—and of the following text of Devala, namely,—"And to the maiden daughter shall be given the father's wealth (and) nuptial property."[2] But at that time there is no certainty that she will give birth to male issue; and since what has been set forth as the reason for her succession

[1] II. Cole. Dig., 542, CCCCXVIII. [2] II. Cole, Dig., 543, CCCCXX.

may reasonably be taken to be intended to indicate only the greater proximity. Moreover he himself shows exceptions to what he holds to be the reason by laying down the succession of a daughter who has or who is likely to have male issue on failure of the maiden daughter. Therefore, agreeably to what we have said, the reason (as set forth in the texts) is to be explained to intend proximity.

3. Dhâresvara, Devasvâmi, Devasata and others, however, in order to avoid a conflict of the texts ordaining the daughter's succession with the following text, *viz.*,—"The father or the brothers shall take the estate of a sonless person,"—say, that the texts establishing the daughter's succession (in preference to the father), &c., refer to the appointed daughter (*puttriká*); in her default, however, the father and the rest are heirs agreeably to their order.

This is very unsound. Since the appointed daughter is placed in the category of subsidiary sons by the following text of Yogísvara, namely,—"The legitimate son is one born of a lawful wife: similar to him is the *puttrikásuta* (an appointed daughter or her son)"—and by the following text of Vasishtha, namely,—"The son of an appointed daughter is known as the third (subsidiary son);"—and since, by reason of the text of Manu, namely,—"Not brothers nor the father but the sons (primary and subsidiary) take the estate of the father,"—an appointed daughter, like the other subsidiary sons such as the wife's son, succeeds to the inheritance in spite of the wife; therefore, *a fortiori* it follows that she succeeds when there is no wife. Hence the above texts would be liable to objection on the ground of being unnecessary, if they be interpreted to refer to an appointed daughter; also it would be unreasonable to assume without any cause that the texts whereof the terms include all daughters without any qualification, are relative to a particular class (of daughters, *viz.*, the appointed daughters). Moreover, the succession of the appointed daughter is declared (by Brihaspati) in the text,—"A daughter, like a son, springs from every limb of the father, &c."—which is, agreeably to your contention, relative to the appointed daughter; the very same thing is again ordained by the very same sage in the text,—"An equal (daughter), espoused by (a person of) an equal (class), chaste and following the wishes of the husband, appointed or not (expressly) appointed, she takes the property of the sonless father;"[1] hence it would have to be assumed in order to avoid tautology, that the one text is merely explanatory of the other: (in our opinion) however, there is clearly no tautology the one text being general in its application and the other, particular. 'An equal daughter', means, a daughter of the same class with the father: 'espoused by an equal', *i.e.*, by a person of the same class; Jímútaváhana says that this excludes those espoused by a person of a superior or inferior class, for it is ordained that a son born of her cannot perform the sráddha of the maternal grandfather of a superior class; but this is not acceptable, since a damsel of a

[1] Brihaspati, XXV. 57.

superior class cannot be married by a man of an inferior class; therefore the term 'by an equal' is to be taken to be intended to exclude one married to a person of a superior class.

Nor can it be argued that Nárada has laid down as a general rule that all the daughters, including the maiden, who are destitute of the father and the brothers, are incompetent to inherit the estate of the father, for he says,—"If she has a daughter, the paternal share is ordained for (the latter's) maintenance; she shall enjoy the share till her marriage; afterwards the husband shall maintain her"[1] —'she' (in the first line) relates to a sonless widow, as the text is declared with reference to her; hence if such a widow has a daughter then her paternal property is ordained merely for the purpose of her maintenance, consequently until her marriage she obtains her paternal share solely for her maintenance, 'afterwards', *i.e.*, subsequent to her marriage the husband shall maintain her; therefore also the residue of the property after defraying her maintenance during that time, may be resumed from her: the succession, however, of the daughter, to the father's property, with the power of disposing the same according to pleasure cannot at all be contended for. And that hence all the texts which establish the daughter's succession to the father's estate must be admitted to refer solely to the appointed daughter, as laying down an exception to what is declared in the above text; for otherwise if both the classes of texts referred generally to all daughters it would be difficult to reconcile them by considering one as laying down a general rule, and the other an exception to it: therefore the opinion of Dháresvara and others ought to be accepted as correct.

This contention would have been correct had the text of Nárada referred to the estate of a separated person. But having regard to what precedes and to what follows (the above text in the Institutes of Nárada) it clearly appears that this text refers to the property of one who was joint or reunited. Hence the texts which lay down the succession of the daughter without any qualification, to the estate of the father, in default of the wife, embody a rule not provided anywhere else which is applicable to the property of a separated person, but they do not provide an exception; consequently we do not see any reason whatsoever for considering these texts as referring to the appointed daughter alone.

Jímútaváhana sets forth the text of Devala, *viz.*,—"To the maiden daughters shall be given, &c."—as an authority for establishing the right of the maiden daughter to succeed to the entire estate of the father. But this is inconsistent with what is said by him in another place; for this very text is cited by him as an authority for allowing, on partition during life, to the maiden daughters, property sufficient for their marriage. That too has been refuted by us before.

[1] Nárada, XIII. 27.

4. Amongst the daughters also, first let the unmarried daughters take the paternal property: in their default the married daughters; amongst these also, first the unprovided ones, and on failure of them the provided ones; all in the same predicament, however, take the property dividing it equally. This rule is settled. Accordingly, Kátyáyana says,—"The wife who is not unchaste, gets the wealth of the husband; in her default, the daughter if she be then unmarried."[1] Gautama ordains,—"Woman's property goes to daughters unmarried and unprovided."[2]—'Unprovided' means indigent. Although 'woman's property' is here mentioned, still the reason being the same, the text is applicable to paternal property also. But it is not reasonable to say that the term "unprovided" means, destitute of offspring by reason of barrenness and the like; for her succession (in that order?) is not proper, inasmuch as she cannot confer spiritual benefit by means of sons.

5. The author of the Smritichandriká explains in the following way the previously cited text of Brihaspati, namely,—"An equal (daughter) espoused by (a person of) an equal (class), chaste, and following the wishes of the husband, appointed or not (expressly) appointed, she takes the property of the sonless father:"—The first four adjectives refer to a daughter who takes the wealth after the wife; the remaining two adjectives qualify a daughter succeeding in preference to the wife. The substantive *puttriká* or the appointed daughter is to be supplied to the adjectives 'appointed or not (expressly) appointed'; the substantive 'daughter' is to be supplied to the other adjectives. The particle 'or' marks an alternative applicable to a determinate different state of things. Thus the meaning is as follows: The twofold appointed daughters are entitled, in preference to the wife, to take the property of the father destitute of legitimate sons; and the daughters who are qualified by the adjectives 'equal', &c., succeed on failure of the wife. Thus in default of the wife, when there are daughters provided as well as unprovided, married as well as maiden, then first, the maiden daughter alone succeeds, for the father was bound to maintain her; in her default, a married daughter who is unprovided (succeeds), for though the husband is bound to maintain her, still she is unprovided by reason of the husband's inability to maintain her; on failure of her, even a provided daughter qualified by the attributes 'equal', &c., takes the property agreeably to the propinquity previously mentioned.

Others, however, having admitted that the term 'appointed' means the *puttriká*, and the term 'not appointed', any other daughter, and that the particle 'or' indicates indifference, explains without supplying any substantive that the whole text refers to any daughter, because the pronoun 'she' relates to the daughter without any qualification, (as used in the preceding text).

[1] Not found.

[2] Gautama, XXVIII, 24.

6. The plural number in the term 'daughters' (in Yájñavalkya's text) is used for the purpose of showing that the shares of the daughters of the same class are equal, but the shares of the daughters of different classes are distinct agreeably to the order of their classes.

Here ends the succession of the daughters.

PART III.

1. On failure of daughters, the daughter's son (becomes heir); for the term 'also' (in Yájñavalkya's text,—'and the daughters also,'—), indicates the inclusion of what is not expressed. Accordingly, Vishṇu says,—"On failure of descendants such as the son and the son's son, the daughter's sons obtain the property; for, in the performance of the funeral obsequies, the son's son and the daughter's son are alike."[1] The term 'on failure of the descendants such as the son and son's son', indicates the failure of heirs down to the daughters. Also Manu says,—"(If a daughter) whether appointed or not appointed brings forth a son by her marriage with a person of equal class; in him, the maternal grandfather has a son's son: he shall offer the funeral oblations and inherit the wealth."[2]—By the term 'has a son's son', it is shown that as a son's son succeeds to his paternal grandfather's estate in default of sons, so the daughter's son in default of daughters. Also Brihaspati says,—"As her ownership arises in the father's wealth, although kindred exist; in the very same way, her son also obtains the estate of the mother's father."[3] The meaning is:—'As', *i.e.*, through the funeral oblations offered by the daughter's son, the daughter becomes heiress of her father's estate; 'in the very same way', *i.e.*, through the selfsame offering of oblations, the daughter's sons also become the owners of the maternal grandfather's wealth; 'although kindred', *i.e.*, the father and the like 'exist'.

2. It cannot be said that this text (of Brihaspati) refers to the son of an appointed daughter; because the pronouns 'her' and 'her son' relate to the unqualified daughter mentioned before. Accordingly, Manu also has declared the right of succession to the maternal grandfather's estate, of the son of a daughter without any qualifications, thus,—"The daughter's son indeed, shall take the entire estate of the (mother's) sonless father; he alone shall offer two oblations to the father and the maternal grandfather. Between a son's son and a daughter's son, in this world, there is no difference in law; since their mother and father are sprung from his body."[4]—The term 'father' is to be interpreted as the mother's father, accordingly the term 'maternal grandfather' is subsequently stated: or (it may mean) as he takes the entire estate of his own father so also of the mother's father who leaves no male issue, by reason of

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[1] Vishṇu, XV. 47
[2] Manu, IX. 136.
[3] Brihaspati, XXV. 58.
[4] Manu, IX. 132 and 133.

his personally performing the duties of his son; this is expressed in the passage, 'he alone, &c.', the meaning is, to his own father and the mother's father: the terms 'mother' and 'father' are not to be construed respectively, but the proper construction is that the son's son's father and the daughter's son's mother are sprung from the body of the proprietor.

3. Some commentators, however, taking the text of Vishṇu, *viz.*,—"On failure of descendants such as the son and the son's son, &c."[1]—in its literal acceptance, say that the daughter's son succeeds in preference to the widow and the daughter. This is to be rejected, because it would be in conflict with the text of Yogísvara, and because the inferiority of the daughter's son to the daughter is indicated also in the text of Brihaspati, namely,—"in the very same way her son also."[2]

Thus ends the succession of the daughter's son.

PART IV.

1. On failure of the daughter's son, 'the parents' (*pitarau*) take the estate.

2. On this subject it is said in the Mitákshará:—Although the order in which the mother and the father succeed to the estate does not clearly appear (from the term *pitarau* in Yájñavalkya's text) since a conjunctive compound is declared to signify simultaneously the sense of the component words, and the uni-residual compound (in which one of the words is retained and the other is suppressed) is an exceptional form of the same; yet, as the word 'mother' stands first in the phrase whereof the uni-residual compound is the result, and is read first in the form other than the uni-residual, *viz.*, *mátá-pitarau*, or 'the mother and the father'; therefore the order of the sense, as deducible from the order of reading, should not be rejected, when there is an inquiry concerning the order of succession; hence the mother takes the estate of her sonless son, in the first instance; and, on failure of her, the father. Besides, the father is a common parent to other sons, but the mother is not so; hence her propinquity is the greatest. And Manu has, in the text,—"To the nearest *sapiṇḍa* the inheritance next belongs"[3]—laid down the rule that even amongst the *sapiṇḍas*, the samánodakás and the like, the greatness of propinquity determines the right of succession. Consequently, where there is this question for determination, there is nothing to prevent the application of this text (of Manu) to the present case also.

3. Thereupon, the author of the Smritichandriká makes the following refined observations: There being no indication of order in the text,—"There are two *sárasvatau* sacrifices," (or *sárasvatau*,

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[1] Not found.

[2] Brihaspati, XXV. 58.

[3] Manu, IX. 187.

one in honor of the goddess *Sarasvati*, the other in honor of the god *Sarasván*)—it is established in the fifth chapter (of the Mímámsá) that the order of performing the sacrifices is regulated by the order of the hymns (called *yájyas*); but it is not established that any indication of the order arises from the uni-residual compound itself, (*viz.*, *sárasvatau*). Similarly, in this instance too, other authority ought to be searched for establishing the order of succession; if there be no other authority, then it is reasonable to say that both the parents take the estate, dividing it in equal shares, for, as in the conjunctive compound so in the uni-residual form, the conjunction of the two words is expressed. As for what has been said (in the Mítákshará), namely, 'that it is proper that the mother should succeed in preference to the father, by reason of her greater or less propinquity, inasmuch as the father is common to even the sons of the step-mother but the mother is not so';—that too is not consistent with reason. Since there cannot be greater or less propinquity of the mother and the father to their offspring; for although the father may beget other sons, still he is equally with the mother, the parent of an offspring; since causality (of the parents in begetting a child) cannot be considered to exist separately in each parent (but exists jointly in both). Nor can it be argued that the estate if taken by the father may descend even to step-brothers, but if obtained by the mother, it will go only to the whole brothers; therefore the mother succeeds (in preference to the father). Because such propinquity being the standard whereby the succession of the brothers and sisters is determined, cannot reasonably be taken to be the criterion for determining the succession of the mother in preference to the father; and because propinquity is of no consequence in this case, where co-equality is expressed by the uni-residual compound which is an exceptional form of the conjunctive compound. Indeed where the question concerning the order (of succession) arises, there propinquity determines the order, and not otherwise. Hence the right of the parents being co-equal they shall take in equal shares the estate of a son without issue. This is maintained by Srikara. But it is not reasonable. For the joint succession of the father and the mother cannot take effect, inasmuch as the independent right of each of them appears from the texts—"The father shall take the estate of a sonless person,"[1]—and—"Indeed the mother shall take the estate of a person who departs for heaven without leaving male issue;"[2] just as when it appears that rice or barley is a means (of something) independently of each other, it does not follow that their mixture has the same effect. Some (commentators) say that the mother is entitled to succeed first, because she confers a greater amount of benefit by bearing the child, by nursing it, and by the like acts, and because it is laid down that,—"The mother is entitled to reverence a thousand times more than the father."[3] This too is nothing; since the father also confers benefits in various ways, by performing the initiations, by furnishing

[1] II. Cole. Dig., 552, CCCCXXV. [2] Manu, IX. 217.
[3] Manu, II. 145.

the means of maintenance, &c., and since it is contrarily laid down that—"Of these again the father is superior, because the seed is declared to be superior."[1] If the reverence alone due to a person had had any effect in determining the succession, then the spiritual preceptor would have succeeded even in preference to the father, inasmuch as it is declared that—"Of the parent and the preceptor of the Vedas, the preceptor is superior;"[2] and the paternal grandfather, the paternal uncle and the like would have succeeded in spite of the brother and the brother's son.

4. Jímútaváhana, however, says: "From the term 'the parents' or *pitarau* (Pt. 1, section 1) it appears that the father is first in the order; since by the radical word *pitri* (whereof the dual number in the nominative case is *pitarau*) the father is first suggested; and the dual number suggests that the term *pitarau* is the result of the uni-residual compound in which one word has been suppressed, but as this compound cannot reasonably be taken to be one of two similar words, (meaning two fathers) therefore in conformity with what has been declared by Vishṇu, Manu and others, it is ascertained to be one of two dissimilar words; and then the mother is suggested. Hence what is said by Srikara, namely, that 'the mental apprehension of an order (of succession) can take place only when there is an expression of such order, hence the expression of order being wanting, the apprehension (of the same) cannot take place', and the reverse order as maintained by Vijñánesvara, are not consistent with reason."

5. Hence when there is difference as to the order to be reasonably deduced from the term *pitarau* or 'the parents', the order as declared in the text of Brihat Vishṇu ought to be accepted. And in that text it is first said that 'it devolves on daughters', and it is then stated that 'if there be none, it belongs to the father; if he be dead, it goes to the mother'. The author of the Mitákshará, however, certainly manifests a great deal of thoughtlessness when he first of all cites this text of Brihat Vishṇu, adopting the above reading, and then relying upon mere reason contrary to it, concludes that among the parents the mother succeeds in preference to the father. The daughter's son again being included in the category of 'daughters' has not separately been mentioned by Brihat Vishṇu, therefore it is to be observed that the default of daughters indicates the default of the daughter's son also. Hence the conclusion arrived at by many commentators such as the authors of the Smritichandriká, the Madanaratna, the Kalpataru, the Ratnákara and the Párijáta, is that it is only in default of the father that the mother succeeds to the estate of a son without male issue.

Váchaspati, however, reads the text of Brihat Vishṇu in the following way, namely,—'if there be none, it goes to the mother; if she be dead it belongs to the father'—and thus comes to the same

[1] Nárada, I. 37. [2] Manu, II. 146.

conclusion as in the Mitákshará. But this is undoubtedly erroneous, as this reading is not met with in any other work.

6. Also the argument in the Mitákshará, namely, "as the word 'mother' stands first in the phrase whereof the uni-residual compound is the result"—it is said to be erroneous; for the rule that the term 'mother' must stand first, is not applicable to the phrase which is reduced to the compound, since that rule is laid down by grammarians with regard to the compound, but not in respect of the phrase to which the compound is resolvable. We now proceed to remove this and other objections raised by others against the reason assigned by Vijñánesvara. The proposition, however, that a conjunctive compound signifies simultaneously the sense of the component words, has been refuted at great length in the Vártika and the Tantraratna while dealing with the subject of the construction of sentences. But as regards the construction with any other word in the sentence, the conjunction of the component words is grammatically conveyed by the conjunctive compound; hence in the passage, "the parents (*pitarau*) are heirs", although the grammatical construction (of 'the parents' with the other words) is simultaneous, still there can be no defect in the sentence even if there be in reality an order between the two parents. This being admitted by Srikara and all others, all this may be solved. Now since in the forms (of the compound) other than the uni-residual one, namely, *mátá pitarau* and *mátara pitarau* or 'the mother and the father', the term 'mother' takes its place first; and since, if the complete and the uni-residual forms of the conjunctive compound had not been capable of conveying the same idea, the optional use of either form would not have been directed; therefore it should be admitted that by the uni-residual form also, the same idea is conveyed in the same order. And although the rule is not authoritatively laid down that the term 'mother' must stand first in the phrase into which the compound is resolvable, yet it is certainly established by the uniform practice of all commentators; since nowhere is the compound *pitarau* found resolved into the phrase 'the father as well as the mother', but always into the phrase 'the mother as well as the father'. Hence by a reason of the maxim that 'even a minute distinction may lead to a conclusion', this too may effect the determination (of the order of succession). It may be that what has been said by the author of the Mitákshará is with this intention.

Although the causality of the parents in the production of a child does not separately exist in each parent, still the greater propinquity of the mother, deduced from the consideration that the father may be a common parent to other sons but the mother is not so,—has been said (by Vijñánesvara) with reference to that consideration alone. There are certainly the attributes of (the one's) being common and (the other's) being not common, arising from relationship and consisting (respectively) in the tardiness and the facility of realising the notions conveyed by the (correlative) terms ('father' and 'mother'); for it is so felt.

'When no order is indicated by the grammatical meaning of the passage, wherefore then is an order in fact assumed?'—This argument of Śrîkara, however, which the authors of the Smriti-chandriká, &c., also had to meet, is refuted on the ground that an enquiry into the order arise, inasmuch as the independent right (of each of the parents) is laid down in other texts.

7. All that remains is the conflict with the text of Brihat Vishṇu, which it is difficult to answer. That also we proceed to reconcile as far as we are able to do. Now we find that there are conflicting texts establishing the comparative reverence due to the father and to the mother. These must be reconciled by referring them to different cases. Thus, the following texts and others to the same effect establish that higher reverence is due to the mother; *viz.*,—"The preceptor of the Vedas ten times more than the tutor, the father hundred times more than the preceptor, but the mother a thousand times more than the father, is entitled to reverence,"[1]—and—"The mother is entitled to a greater degree of piety by reason of her bearing the child and nursing it:"[2] while texts of Smriti, such as—"Of these two, again, the father is superior, because the seed is declared to be superior,"[3]—and fact like the following related in the Puránas, namely—that Parasuráma, in compliance with the order of his father, beheaded his mother, and that Ráma, although prevented by Kausalyá (his mother) did, in obedience to the command of his father, renounce the throne and retire to the forest,—show that higher reverence is due to the father.

And the way in which these may be reconciled is this: When the father is endowed with all the qualities entitling him to the greatest veneration, as is described in texts like the following one of Yogîsvara, namely,—"A father is entitled to the highest veneration, who having performed the initiatory ceremonies, instructs the son in the Vedas;"[4] and when the mother is devoid of all those virtues which constitute chastity, such as obedience to the husband; then, of these the father is entitled to higher respect than the mother. If, however, the mother is like Arundhatí, endowed with all the virtues of chastity, and the father is merely the progenitor; then in such a case the mother is indeed entitled to greater respect than the father. Likewise, from the story of Chirakáriká in the Mahábhárata also, this distinction appears as the purport of that story. Hence in this instance also, the succession to the estate of a son without male issue, which, as laid down in the texts of Manu and other sages, appears to devolve in the first instance on the mother according to some (texts), and on the father agreeably to others,—ought properly to be reconciled in this way alone. Thus, Manu says,—"The mother shall obtain the property of a son dying without male issue, and if the mother be dead, then the father's

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[1] Manu, II. 145.
[2] II. Cole. Dig., 551.
[3] Nárada, I. 37.
[4] Yájñavalkya, I. 34.

mother shall take the estate:"[1] Brihaspati says,—"The mother shall take the estate of a deceased son who leaves neither widow nor son, or a brother (shall take) with her permission:"[2] again, Manu says,—"The father or the brothers alone shall take the estate of one leaving no male issue:"[3] the text of Brihat Vishṇu, cited before, lays down that "if there be none, it belongs to the father; if he be dead, it goes to the mother:" and in the text of Yogísvara is used the term "parents", which, according to Vijñánesvara, signifies 'first the mother and after her the father', and according to others, the joint succession of both the parents, or the priority of the father. There being this diversity, (the reconciliation is, that) the mother succeeds in preference to the father, if she be entitled to greater reverence than the father; but she is postponed to the father, if she be entitled to lesser reverence than the father. And it is reasonable that a mother who confers greater benefits than a father who does not provide with the means of maintenance and the like, should take the estate: and that a father who furnishes the means of maintenance and the like, and consequently renders the greatest benefit by rearing and by providing with the means of subsistence for life, should take the estate (in preference to the mother). It should be particularly noticed by the learned, that it is thus that all the texts and all the commentaries become reconciled.

PART V.

On failure of the parents the brothers take the estate.

Although it appears from the text of Sankha and Paithínisi, namely,—"The wealth of a sonless person who departs for heaven goes to the brothers; if there be none, let the parents take, &c.,"[4]—and from the text of Mauu, namely,—"Or the brothers alone"—that the brothers succeed in preference to the father; and it appears from the text of Manu, namely,—"And if the mother too be dead, the father's mother shall take the estate"—that the paternal grandmother is entitled to succeed in preference to the brothers: still in order to avoid a conflict with the texts of Yogisvara and Brihat Vishṇu which lay down the order of succession, it is to be held that the above texts lay down merely their right of inheritance; and that with a view to intimate that there is no conflict with the above order, Manu and Paithínisi employ the term 'or' thus, "or the brothers alone" and "or let the senior wife take"; otherwise, if they were heirs of equal position to use the particle 'or' would be extremely unreasonable. This is the opinion of the author of the Mitákshará and many others.

But the author of the Kalpataru says:—When there are the widow and a brother, then the chaste widow who is competent to perform the funeral obsequies and the like, succeeds first, but one

[1] Manu, IX. 217.
[2] Brihaspati, XXV. 63.
[3] Manu, IX. 185.
[4] II. Cole. Dig., 532, CCCCIII.

who is not so, succeeds after the brother and the father: but when there are the father and a brother, then the property which was acquired by the father, grandfather, &c., and which on partition was allotted to the son, goes to the parents if the son dies without male issue; but the property which was acquired by him without using paternal property devolves on the brother notwithstanding the parents.

But it appears to me that in the text of Manu, namely,—"if the mother too be dead the father's mother shall take the estate"—and in the text of Sankha and Paiṭhínisi, namely,—"if there be none, let the parents take"—and in the text of Devala, namely,—"Then the uterine brothers shall divide (amongst themselves) the heritage of one leaving no male issue; or else the equal daughters; or else the surviving father; the brothers of the same class, the mother or the widow, agreeably to their order: in default of all these, those kinsmen (*kulyas*) who dwell together shall take,"[1]—order is expressed by the terms 'dead', 'in his default', and 'agreeably to their order'. Hence it is not at all a perfect reconciliation to say that the texts of Yogísvara and Vishṇu being alone declaratory of the order of succession, and the other texts being intended to show merely the right of inheritance, no objection can arise from the assignment of positions (to these heirs) in the latter texts, contrary to those in the previous ones. But as in the instance of the wife's son and others, the conflicting order expressed in the texts of law has been reconciled with reference to their possession or want of good qualities and to their friendliness or animosity towards the legitimate (*aurasa*) son; so here too in the chapter on Partition of Heritage, the description of the sons, &c., conferring benefits upon the father, &c., or the description of the possession or want of good qualities, can have no other object, like the description of comparative propinquity. Hence any conflict of texts with regard to the order of succession is to be reconciled with reference to the possession or want of good qualities, and to the greatness or smallness of benefits conferred upon the proprietor. Any other reconciliation is not acceptable as being imperfect. Similarly in any instance in the sequel. Thus everything is consistent.

2. Amongst the brothers also, first the uterine brothers (succeed). Because it is laid down by Manu in the text,—"To the nearest *sapiṇḍa* the inheritance next belongs"—and by Brihaspati in the text—"When one has many *jnátis* (or kinsmen,) *sakulyas* as well as *bándhávás*; he who is nearest among these shall take the estate of one leaving no male issue"[2]—that the greatness of propinquity is alone the criterion (of succession) in the absence of special provision; and the remoteness of half brothers is caused by their mother. But the term 'brothers' being used without any qualification, the half brothers succeed in default of uterine

[1] II. Cole. Dig., 532, CCCCIV.

[2] Brihaspati, XXV. 62.

brothers. This is clearly stated by the author of the Sangraha, thus,—"If there be two classes of brothers, namely, whole brothers and half brothers, then the whole brothers take the estate notwithstanding the half brothers."

Thus ends the succession of brothers.

PART VI.

1. In default of brothers, 'their sons', *i.e.*, the brothers' sons are heirs. Nor can it be said that since by the term 'likewise' in the passage 'likewise, their sons', similarity between the brothers and the brothers' sons is indicated; and since it has been declared that—"Among those, however, whose fathers are different, the allotment of shares is according to the fathers;"[1]—therefore on failure of the parents, let them both jointly take the estate. Because, for fear of conflict with the text of Vishṇu, the term 'likewise' is to be taken to convey the same meaning as the term 'and'. Otherwise, as the term 'likewise' might as well be construed with what precedes, wherefore could not joint succession of the parents and brothers take place? If it be said that it does not take place by reason of its conflict with the text of Vishṇu—the same may be said in this instance as well. And the meaning of the text, "Among those, however, whose fathers are different, &c."—is this: when on the death of a brother their right takes effect, *i.e.*, when any brother dies without leaving male issue and the right of all the surviving brothers accrues to the estate left by him, but if prior to the partition of the estate any one amongst these also die, then his sons would have become entitled to equal shares with their uncles, but (agreeably to the above text) they are all to take that share only which their father would have taken on partition, and not each a share equal to that of an uncle. Because, while a brother is alive, his sons have no right to the estate of their uncle; since it is declared in the text of Yogísvara that "in the absence of the preceding one, every succeeding one is heir";[2] and since in the text of Vishṇu, namely,—"On their default it goes to the brothers' sons,"[3]—the failure of brothers is expressed, as the pronoun 'their' relates to the term 'brothers'.

2. Amongst the brothers' sons also, the sons of the uterine brothers, by reason of their greater propinquity, succeed in the first instance; in their default, the sons of half brothers. And this is reasonable; because a son of a half brother presents the pinda to the (deceased) proprietor's father and to his own paternal grandmother, omitting the proprietor's mother, therefore he being inferior to a uterine brother's son succeeds after him. Nor can it be argued that inasmuch as the three ancestors together with their wives are the objects to whom the funeral oblations are addressed, therefore the rival mother and the like also are included. Because the terms

[1] Yájñavalkya, II. 120. [2] Yájñavalkya, II. 132.
[3] Vishṇu, XVII. 9.

'mother' and the like signify primarily one's own parent, the father's parent, and the grandfather's parent; and these as such are declared to be the objects to whom oblations are offered; thus, it is ordained,—"The mother partakes of the funeral oblations consisting of food with her own husband; also the paternal grandmother with her own, and with her own the paternal great-grandmother."[1] The offering of oblations to the rival mother and the like, rather follows from what is declared in the text., *viz.*,—"Those men as also women who die without male issue; to them also should be offered oblations addressed to a single individual, but not such oblations as are presented on *parva* occasions."[2] Besides, all persons beginning with the son are competent to perform the ceremony of the sráddha in honor of the forefathers with their wives, and there are not always the rival mother and the like, therefore it is reasonable to hold that the rule of presenting oblations to the ancestors with their wives includes only the mother and the like, so that there might not be the objection of uniting what is constant with what is accidental.

Thus ends the succession of brothers' sons.

PART VII.

1. On failure of the brothers' sons, (the heirs are) the 'gentiles' (*gotrajás*) who are to be taken to be other than the father, the brother and his son that have been previously set forth, by reason of the rule of 'the bulls and the beeves'.

Vijñánesvara says:—The gentiles are the paternal grandmother, the sapiṇḍas (or persons of the same family or *gotra* connected through the pinda or body), and the samánodakas (or persons of the same family other than the sapiṇḍas. Of these the paternal grandmother succeeds in the first instance. Although it would appear from the text of Manu, namely,—"when the mother too is dead, the father's mother shall take the estate",[3]—that the succession of the paternal grandmother takes place immediately after the mother; still she cannot reasonably be placed between the settled series of heirs from the parents to the nephew: and there is no reason for postponing her further, in spite of her superiority (as set forth in the text of Manu): hence it is only after her that the paternal grandfather and other gentiles succeed.

2. On this subject the author of the Smritichandriká says:—The term 'gentiles' or *gotrajás* (or those descended from the *gotra* or family), being a uni-residual compound of similar terms, denotes males only, but not females. For a term is taken to be a uni-residual compound of dissimilar terms, when it is shewn to be so by the purport as understood from other evidence such as the association with another sentence, just as in the passage, "Bring two chickens, which will make a pair"; but there is no such evidence in the

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[1] II. Cole. Dig., 561, CCCCXXXII. [2] Not found.
[3] Manu, IX. 217.

present instance. On the contrary, the association with the terms 'brother's sons', &c., shows that the male gentiles alone are intended. Besides, the succession of the widow, the daughters and the like being specially laid down, the text of Sruti, namely,—"Therefore women are devoid of the senses, and incompetent to inherit"—may be explained to refer to other women than those (with regard to whose succession there are special provisions); but in the case of the gentiles and so forth, the supposition of the term being a uni-residual compound of dissimilar terms, ought rather to be rejected, in order to avoid a conflict with that text. Accordingly, while explaining the text of Ápastamba, namely,—"The father during his life may divide the heritage among the sons,"[1]—the commentator says, 'may divide the heritage among the sons only, not among the daughters, they being females'; and then goes on to say,—Although here the term 'sons' may be made to include daughters, by considering the term 'sons' to be a uni-residual compound of sons and daughters, upon the authority of the aphorism of Páṇini, namely,—"The terms 'brother' and 'son' (may be compounded in the uni-residual form) with the terms 'sister' and 'daughter'" (respectively); yet the males are heirs and not the females, by reason of the following text of Sruti,—"Therefore women are devoid of the senses, and incompetent to inherit." The intention of the commentator is, that although there is authority for taking the term 'sons' to be a uni-residual compound of dissimilar terms, still in the instance under consideration, it is not taken to be so, by reason of conflict with the text of Sruti and by reason of the absence of anything suggesting that purport.

Also Jímútaváhana says:—And Yájñavalkya makes use of the term *gotrajás* or gentiles for the purpose of showing that the daughters' sons of the father, &c., who are descended from the same *gotra*, become heirs in the order of their nearness with reference to the offering of oblations; also for the purpose of excluding the wives of sapiṇḍas, they being not sprung from the same *gotra*. Accordingly Baudháyana, having in the previous text, said, "a woman is entitled to", declares,—"not to the heritage, since a text of the Sruti ordains, 'women are devoid of the senses, and incompetent to inherit'".[2] The construction is that a woman is not entitled to the heritage. The succession of the widow and the like is not opposed (to the above interpretation) inasmuch as that is expressly declared.

3. That is not good. Since in the text of Manu and others, cited before, the succession of the paternal grandmother has expressly been laid down; therefore even if the text of Yogísvara be, consistently with those texts, considered to include her by taking the term 'gentiles' or *gotrajás* to be a uni-residual compound of dissimilar terms, there would be no conflict with the (above mentioned) Sruti which may be held to refer to women other than the paternal grandmother.

[1] Ápastamba, II. 6, 14, 1.

[2] Baudháyana, II. 2, 3, 46.

Jímútaváhana, however, does, in that part of his work where he deals with the mother's succession, say,—"The paternal grandmother's succession takes place after the paternal grandfather and before the grandfather's descendants, like the mother's succession after the father. The succession of the paternal grandfather and grandmother has not been separately propounded by Yájñavalkya, inasmuch as the same is virtually declared by showing the mother's succession." But in this part of his work, he says,—"The term *gotrajá* has been used for the purpose of excluding the wives of the sapiṇḍas." Thus he fails to observe that he contradicts himself. For in the text of Yogísvara, the absence of express mention of the paternal grandmother is the same as that of the wives of the paternal uncle, &c.; so the text of Sruti, declaring incompetency to inherit is as well applicable to the paternal grandmother as to the wives of the paternal uncle.

Agreeably, however, to the interpretation put upon the text of Sruti, *viz.*,—"Therefore women are devoid of the senses, &c." —by the venerable Vidyáranya, which has previously been cited, this text does not at all prohibit women's right of succession: so there can neither be a doubt (as to their competency to inherit) nor an answer (to such doubt). But it should be remarked how can that interpretation be accepted when it is in conflict with the text of Baudháyana? For although the term *indriyá* may be taken in any of its acceptations, still there is nothing else (in the text of Sruti) to support women's incompetency to inherit, and it cannot be held that the text of Sruti has nothing in it to support the position that women are not entitled to inherit; hence it cannot but be held that the text of Sruti does prohibit women's right of succession, inasmuch as otherwise the quotation (by Baudháyana) of that text as establishing the position would be unreasonable: just as in the instance, "Therefore an unknown embryo being killed (a man becomes) murderer of a Bráhmin."

4. On failure of the paternal grandmother, the paternal grandfather and the other sapiṇḍas of the same *gotra* are heirs; since the sapiṇḍas (or persons connected through the pinda or body) of a different *gotra* are included under the term *bandhu* or 'cognates'.

Among these also, in default of the father's descendants, the paternal grandmother, the paternal grandfather, the paternal uncles and their sons become heirs in their order; in default of the paternal grandfather's descendants, the paternal great-grandmother, the paternal great-grandfather, his (paternal grandfather's?) brothers and their sons; similarly to the seventh (degree) the sapiṇḍas of the same *gotra* take the estate of a person without male issue.

On the failure of the sapiṇḍas, the samánodakas (succeed). They comprise seven (degrees) above the sapiṇḍas, or all whose birth (from the same *gotra*) and (family) name are known. Thus Manu says,—"The sapiṇḍa (or consanguine) relationship, however,

ceases in the seventh generation, but the samánodaka relationship extends up to the fourteenth (generation), or as some affirm to those whose birth and name are known. The term *gotra* signifies these, *i.e.*, the sapiṇḍas and the samánodakas."[1] It has already been shown that, in the text of Vishṇu the term 'bandhu' signifies a sapiṇḍa, and the term 'sakulya' means a *sagotra*. The samánodakas also become heirs in the order of propinquity.

5. On failure of the samánodakas the 'cognates' or 'bandhus' are heirs. The cognates are of three descriptions; the cognates of a man himself, the cognates of the father, and the cognates of the mother. To this effect is the following passage of the Smriti,—"One's father's sister's sons, one's mother's sister's sons and one's maternal uncle's sons are known to be one's own cognates; the father's father's sister's sons, the father's mother's sister's sons and the father's maternal uncle's son are known to be the father's cognates; the mother's father's sister's sons, the mother's mother's sister's sons and the mother's maternal uncle's sons are known to be the mother's cognates."[2]

Amongst these also the order is, that, by reason of greater propinquity, first one's own cognates, after them the father's cognates, and after them the mother's cognates.

In the text of Manu, namely,—"In ther default, a sakulya, or the preceptor, or a pupil (becomes heir),"[3]—the term 'sakulya' includes the *sagotras* (sapiṇḍas)? and samánodakas, the maternal uncle and the like, and three classes of cognates. Also in the text of Yogísvara the term 'cognates' or 'bandhu' comprises also the maternal uncle. Otherwise, the exclusion of the maternal uncle and the like would be the result. And it would be extremely improper that their sons are heirs, but they themselves though nearer are not heirs.

6. In default of the cognates, the preceptor is heir. Although the preceptor is not mentioned in the text of Yogísvara, still the pupil has been mentioned; and it ought, by reason of propriety, to be held that the preceptor who is superior to him and nearer, is implied. Because the succession of a pupil on failure of the preceptor is expressly declared by Manu in the text,—"or the preceptor or a pupil", and by Ápastamba in the text,—"If there be no male issue, the nearest (sapiṇḍa inherits; in their default, the preceptor; failing him, a pupil."[4]

7. On failure of a pupil, the fellow-student takes the estate; that is, he who received his investiture and education from the same preceptor.

8. If there be no fellow-students, the king shall take excepting the estate of a Bráhmin, by reason of the text of Vasishṭha, cited

[1] Manu, V. 60.
[2] Attributed to Baudháyana but not found in his Institutes.
[3] Manu, IX. 187.
[4] Ápastamba, II. 6, 14, 2 and 3.

before, which, after declaring the succession of all down to the pupil, says,—"in his default, it goes to the king excepting the property of a Bráhmin,"[1]—and by reason of the text of Manu, namely,—"In default of all those, however, the property shall go to such Bráhmins, as are versed in the three Vedas, as are pure in body and mind and as have subdued their passions: thus, religious merit is not lost. The property of a Bráhmin shall never be taken by the king: this is the settled law. But the wealth of the other classes, on failure of all (heirs,) the king may take."[2]

9. In default of all down to the fellow-student, the wealth of a Bráhmin is taken first by a Srotriya or such a Bráhmin as is versed in the Vedas; failing him, by any Bráhmin. Thus Gautama says,—"The Srotriyas shall take the estate of a Bráhmin leaving no male issue."[3] But any Bráhmin succeeds, as in the text of Manu the term 'Bráhmin' is used without any qualification. It is also declared by Nárada,—"If there be no heir of a Bráhmin's wealth, on his death, it must be given to a Bráhmin. Otherwise the king is tainted with sin."[4]

PART VIII.

1. With reference to the estate left by a hermit, &c., an exceptional rule, excluding the (ordinary) heirs such as the son and the rest, also the wife and the like, is propounded by Yogísvara, thus,—"The heirs of a hermit (*vánaprastha* or one who has entered the third order of life), or an ascetic (*yati* or one desirous of *moksha* or liberation from transmigration) and of a student (*brahmachári*), are, in their order, the preceptor, the virtuous pupil and the spiritual brother resident in the same holy place."[5]

The term 'student' here, by reason of its association with the term 'ascetic', means a lifelong student (*i.e.*, one who has taken a vow to remain a student for life and not to enter into a married life): hence the estate of a person who has been leading the temporary life of a student (which every twice-born man is enjoined to lead before becoming a householder) devolves on the parents and the like in the specified order, for such a person cannot have heirs from a son down to a daughter's son.

The order mentioned in the above text is to be understood to be the inverse one. Accordingly, the wealth of a deceased student goes to the preceptor; of an ascetic, to the virtuous pupil; of a hermit, to the spiritual brother resident in the same holy place.

The spiritual brother is one adopted as a brother; the term 'holy place' signifies a hermitage, hence 'resident in the same holy place', means, resident in the same hermitage; the meaning is, one

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[1] Vasishṭha, XVII. 83 and 84.
[2] Manu, IX. 188 and 189.
[3] Gautama, XXVIII. 41.
[4] Not found.
[5] Yájñavalkya, II. 137.

who is a spiritual brother as well as is resident in the same holy place.

The virtuousness of a pupil, however, does not mean good conduct; for the exclusion from inheritance, of even the son and the rest, whose conduct is bad, is established by other authority. And that will be mentioned. But it is to be taken to consist in the capacity for understanding lectures on psychology, digesting the same and following its doctrines in practice.

The author of the Madanaratna, however, having cited the text of Vishṇu, namely,—"The preceptor shall take the wealth of a hermit *(vánaprastha)*, or the pupil,"[1]—and thinking the order (mentioned in Yájñavalkya's text) to be direct and not inverse, says that in default of the preceptor the pupil takes the wealth of a hermit.

2. If it be said:—It being established thet the lifelong student and others have no concern with property, in text like the following one of Vasishṭha, namely,—"They who have entered into another order, are debarred from shares,"[2]—the declaration, in the above text of Yájñavalkya, of the succession to their estate is not proper. Nor can it be argued that although their right of taking the heritage is forbidden by Vasishṭha and others, still the above text establishes the right of succession to their property acquired by other means. Since it is ordained that, "A student and an ascetic both are owners of the prepared food (and of nothing else),"[3] and since acceptance and the like (means of acquisition) are prohibited to students, and since the saving of property by an ascetic is prohibited in the text (of Gautama), namely,—"A mendicant shall have no hoard."[4]

The answer is, that it is not tenable. Since, by reason of the text, namely,—"(The hermit) may make a hoard of things sufficient for a day, a month, six months, or a year; and in the month of Asvayuja he should give away what has been collected,"[5]—a hermit has certainly some property sufficient for food, &c.; the ascetic too has something such as clothes, books, &c., by reason of the text,—"An ascetic should wear clothes to cover his privy parts, and take the requisites for austerities (*yoga*) and the sandals;"[6] the lifelong student also must have clothes and the like for the protection of his body. Hence the question occurring, who is to take these things belonging to them, after their death? the above heirs are declared to the exclusion of other heirs.

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[1] Vishṇu, XVII, 15 and 16.
[2] Vasishṭha, XVII. 52.
[3] Not found.
[4] Gautama, III. 11.
[5] Yájñavalkya, III. 47.
[6] Not found.

CHAPTER IV.

REUNION.

1. Now the partition of reunited property is considered.

On that subject, Manu says,—"Should those, who dwell together after having been separated, again divide their property; in that case the distribution shall be equal; there is no deduction for seniority."[1] Here, although it follows from the very restriction laying down equal distribution, that the mode of unequal division is to be rejected; still the passage "there is no deduction for seniority", is added in order to show that only the unequal distribution caused by seniority, &c., does not take place, but that there is certainly unequal division on account of the union of greater and less property.

Some, however, say that the unequal distribution owing to seniority, &c., must be made of the augmented portion (if any) of the reunited property; but the division of the reunited property must be equal: with a view to indicate this, the portion "there is no deduction for seniority"—has been added.

This is not tenable. For a distinction like this does not appear from the above text, since, from the passage "in that case the distribution shall be equal",—it appears that the restriction as to equality is applicable to the accession also.

2. Just as in the partition of undivided property, so also in the partition of reunited property, the impartibility of what has been acquired by science, &c., without using reunited property, would equally have been the rule; but an exceptional rule has been laid down by Brihaspati, thus,—"But if any one of the reunited co-heirs acquire property by science, heroism, &c., two shares shall be allotted to him, the rest shall be equal sharers."[1]

3. Many are of opinion that reunion may be formed only with the father, &c., but not with any other, by reason of the text of Brihaspati cited before, namely,—"He, who being once separated dwells again through affection together with the father, brother or paternal uncle is called reunited."[2]

But we have shown at great length that the enumeration of the father, &c., is illustrative (not exhaustive).

4. Just as in the case of partition among undivided co-heirs, so also among those that are reunited, if any one die before partition is made, his sons shall take and divide amongst themselves their paternal share, by reason of the text,—"Among those whose fathers are dead (different?) the allotment of shares is according to their fathers."[4]

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[1] Manu, IX. 210.
[2] Brihaspati, XXV. 77.
[2] Brihaspati, XXV. 72.
[4] Yájñavalkya, II. 120.

But if any one of the reunited co-heirs die without leaving male issue, then the succession to his estate would have devolved on the wife, &c., by reason of the text,—"The wife and the daughters also, &c.;" but in continuation of the passage "of a sonless deceased person", (occurring in that text) an exceptional rule is laid down by Yogísvara in the following text, namely,—"But of a reunited (co-heir,) a reunited (coparcener shall keep the share, when he is deceased or deliver it if born)."[1] The term 'but' shows that it forms an exception to what precedes. Thus the meaning is, that the estate of a reunited co-heir dying without male issue shall be taken by a reunited co-heir alone, and not by the wife or the like. Hence, Jímútaváhana must be considered to have erred, who interprets the text to be applicable when, among the series of heirs to the estate of a sonless person beginning with the wife, the brothers' right takes effect.

To this rule again, an exception is propounded (in the latter part of the above text),—"But of a uterine brother, a uterine brother shall keep the share when he is deceased, or deliver it if born."[2] This is to be construed with the preceding portion, namely, "Of a reunited, a reunited."—Accordingly the meaning is as follows: A reunited uterine brother shall deliver the share of a reunited uterine brother, if born, *i.e.*, if he is born in the shape of a son, that is to say, shall deliver it to his son; or shall keep, *i.e.*, shall himself take the share (of a reunited uterine brother) when he is deceased, *i.e.*, not living even in the shape of the son, grandson, or great-grandson. If this text were interpreted without construing it with the two terms that precede, then it would be opposed to the fact of this text forming an exception to what precedes, which follows by force of the term 'but'. And it forms an exception to what precedes, in this way: when there are a uterine brother and a half-brother both reunited, in that case the reunited whole brother alone is entitled to the property of a reunited uterine brother, and not the half-brother.

When however, a half-brother alone is reunited, and a whole brother is not so, then they take in equal shares the property of a brother without male issue. This is declared (by Yogísvara) in the text,—"But a reunited half-brother may take the property, not a half-brother (not reunited); also the (brother) united (through uterus) though not reunited may take, not the (united) son of a different mother (exclusively)."—Here the term 'not reunited' is, like the eye of a crow, connected both with the preceding and with the latter part. So the term 'united' and this term signifies, in the first part, united through the uterus, *i.e.*, a uterine brother; but in the latter part, reunited. The term 'exclusively' is to be supplied immediately after the term 'son of a different mother'. Hence the meaning of the text is this: A step-brother, though not sprung from the same mother, takes the property if reunited; but a

[1] Yájñavalkya, II. 138.

[2] Yájñavalkya, II. 138.

step-brother does not take, if not reunited: therefore, by showing the existence and absence of reunion to be the cause respectively of the succession and non-succession of a half-brother, what is affirmed is, that the reunion of a half-brother is the sole cause of his succession, and not his fraternity alone: likewise 'the united', *i.e.*, the uterine brother although not reunited succeeds, and *a fortiori* when reunited: and the son of a different mother, although united, *i.e.*, reunited shall not exclusively take the property, but shall take together with a uterine brother though not reunited. The purport of the text is this: when the uterine brother is not reunited but the half-brother is reunited, then because of the two attributes, namely, being a uterine brother and being reunited, each of which constitutes a cause of the right of succession, one is present in each, therefore both of them take in equal shares the property of a brother without male issue: should the uterine brother be reunited, then by reason of the combination of both the causes he becomes the preferable claimant, therefore he alone takes the entire estate.

Although by each of the restrictive rules laid down in the above texts of Yogísvara, the inefficacy of the other cause of succession is established, still for the sake of emphasis the same is expressed over again; for in both ways the same meaning may be expressed.

The masculine gender in the terms 'reunited, &c.', (in the above texts of Yogísvara) is not intended to be significant. Accordingly, Manu declares the right of the uterine sisters also to succeed to the property of a reunited brother. Thus he, having premised partition among the reunited kinsmen, in the text,—"If those who are associated after separation make a partition again"—goes on to say,—"Of these, if the eldest or the youngest or any other be deprived of his share at the distribution, or any one of them die, his share shall not be lost; but his uterine brothers being assembled and united shall divide that equally; also brothers that are united and sisters born of the same mother."[1] The meaning is:—Among reunited brothers, if the eldest, the youngest or the middlemost, at the distribution, *i.e.*, at the time of making a partition,—the termination of the word (*amsapraddnatah*) which denotes any case, denotes here the locative case,—be deprived, *i.e.*, become disentitled by reason of degradation or adoption of an order other than that of the householder, or dies before partition; his share shall not be lost, *i.e.*, shall be set apart: but it shall be delivered to his male issue in the first instance: failing them, the uterine brothers though not reunited, being assembled, *i.e.*, if gone to a different country returning thence, united, *i.e.*, assembled together; also brothers, *i.e.*, half-brothers that are united, *i.e.*, reunited, and the uterine sisters of the deceased shall divide, *i.e.*, take it after division, equally, *i.e.*, without inequality. Here Manu by declaring the succession of the uterine brothers and sisters, even if they are not reunited, and of

[1] Manu, IX. 211 and 212.

the half-brothers in case they are reunited, clearly expresses the very same meaning as is declared by Yogísvara.

5. On this Srikara says: When there are only reunited half-brothers, then the precept, "But of a reunited (co-heir), a reunited (co-heir) shall keep the share, when he is deceased, or deliver it if born"—is independent of any other precept; so is the precept, "But of a uterine brother, a uterine brother, &c.,"—when there are only uterine brothers not reunited: but, when there are both a reunited half-brother and a whole brother not reunited, if the two precepts be applicable, then both precepts take effect dependently upon each other. But it is not right that the same precept be operative independently of, and dependently upon, another precept; for in that case there would be variableness in the precept. Just as in the seventh chapter (of the Mímámsá) a different conclusion is made for fear of variableness in the precept, which would have been the consequence had the operativeness of the precept, "in these two the holy fire is kindled"—been taken, in respect of the two of the four sacrifices, to be dependent on the option created by the prohibition embodied in the precept, "the holy fire-place is not made in the *vaisvadeva*, &c."; but independent, in respect of the other two sacrifices. Accordingly, when there are a half-brother reunited and a whole brother not reunited, neither of the precepts is applicable; and it would follow that no one could take the estate (there being no provision for this case). Hence it is to be held that the right of a reunited co-heir to succeed to the property of a reunited coparcener, being declared in the text,—"But of a reunited (co-heir), &c.,"—the latter part, *viz.*,—"But of a uterine brother, a uterine brother, &c.,"—is set forth as forming an exception to that. Hence it follows that a half-brother though reunited has no right, when there is a whole brother although not reunited.

This assertion is the consequence of not studying the principles of the topics of construction contained in the Mímámsá. For it is not correct, that there is variableness in precept, merely because two precepts, which are independently applicable to some cases, become both applicable to some other case where the subjects of both (the precepts) are combined. Since, if it were so, then the precepts enjoining the bestowal of the whole wealth as gratuity to the priest in the one instance, and no gratuity in the other, which are respectively applicable independently of each other, if either the priest called *udgátri*, or the one called *pratistotri*, singly stumble (in passing from one apartment to the other, at the celebration of the sacrifice called *jyotishthoma*),—would not be applicable (by reason of variableness, such as is maintained by you,) if both those priests should stumble at the same time; so there would be no conflict, there being no two propositions opposed to each other; hence the discussion in the topic of stumbling (in the Mímámsá), must be held to be uncalled for. Therefore the variableness in precept is, when a precept becomes operative in one instance, independently of any

opposition of a different precept, and in another instance dependently of such opposition: as has previously (p. 150) been illustrated by the instance of the precept,—"Here they construct the holy fire-place, &c." Otherwise, neither of the two precepts, *viz.*, "Shall touch with the hymn called *chaturhotrá* at the full moon", and "Shall touch with the hymn termed *panchahotrá* at the new moon"—(in which the burnt-offering is meant to be the object of touch),—which are severally applicable to the sacrifices called *upámsu* (which takes place at the full moon) and *agnishomíya* (which takes place at the new moon) in the first of which the burnt-offering is curd consecrated to Indra, and in the second, milk consecrated to Indra,—would be applicable to a sacrifice which takes place both at the full moon and at the new moon, although the burnt-offerings are combined.

As for his own interpretation, namely, that the rule,—"But of a uterine brother, &c.,"—is an exception to the rule,—"But of a reunited, &c.":—that is extremely incongruous. For the converse (of the proposition that one is an exception to the other) may as well be asserted, there being no criterion for determination; and the mere fact of the one being placed after the other cannot lead to that conclusion. Again, the text,—"But a reunited half-brother, &c.,"—has been said (by Śrikara) to be explanatory of the text,—"But of a reunited (co-heir), &c." But to say this, is to say that that text is useless. Besides, the text—"But of a uterine brother, &c.,"—being explained (by Śrikara) to exclude a reunited half-brother when there is a whole brother although not reunited, it is not applicable to the case where both a whole brother and a half-brother are not reunited; consequently neither of them would be heir, or both of them would be equally entitled. If it be said that the very text,—"But of a uterine brother, &c.,"—is applicable to this case also, then the objection of variableness in the precept may be retorted on you; for, in one instance it becomes operative dependently of opposition of the text,—"But of a reunited (co-heir), &c.,"—and in another instance, independently of such opposition. Just as, if the precept directing the construction of the altar at a sacrifice with the *soma* plant, were applicable to the *díkshaníya* and the like sacrifices (which are performed at the full moon and the new moon and in which *soma* is employed), in opposition to the precept which generally directs the construction of an altar in the *darsapaurnamása* sacrifice performed at the new and the full moons, and which extends to the above-mentioned sacrifices, which are parts of that sacrifice; then that precept would be operative in those sacrifices dependently of opposition of the extending precept, and in others independently thereof: so there would be variableness in the precept; hence it has been concluded that the precept applies to those sacrifices with reference to which there is no other precept directing the construction of an altar.

But agreeably to the mode of interpretation adopted by us, the subjects of the two rules (of Yogísvara) being different, the

objections of uselessness and of variableness in precept cannot arise. There is no use in spinning out the matter.

6. The author of the Smritichandriká, however, says:—It appears from the terms 'also', 'being assembled' and 'united' in the text of Manu, *viz.*,—"Of these, if the eldest or the youngest, &c."—that the uterine brother and sister and the reunited half-brother are jointly entitled to succeed: but it appears from the text of Yogísvara, that a half-brother is not entitled to succeed when there is a reunited whole brother: hence there is a conflict between these two texts. With a view to avoid this conflict, some explain the text of Manu in the following way: That unlost share shall be taken by those uterine brothers alone that are reunited, and not also by such uterine brothers as are not reunited; failing a reunited whole brother, all the uterine brothers, 'being assembled', *i.e.*, meeting together, and 'united', *i.e.*, with equal prominence, shall divide it 'equally', *i.e.*, in equal shares; in default of the uterine brothers, the uterine sisters; and in their default, the half-brothers. This interpretation is to be rejected, as in it many terms are to be supplied (which are not in the text) and as it is far-fetched. Vijñánesvara has, in order to make the two texts consistent with each other, adopted a different reading of the text of Yogísvara, namely,—"But a reunited half-brother may take the property, not a half-brother (not reunited);" but nevertheless, the interpretation put by him is evolved out of his inner consciousness, for it is a forced one, by reason of the supply (of a term not in the text) and of the construction of the same term with different sentences, and is very obscure. Hence a reconciliation of the texts of Manu and Yogísvara as bearing only the plain meanings, is to be effected only by referring them to different cases, and not by ringing changes upon the words (of the one text) to give out the same meaning (as the other). The same we proceed to show. The text of Manu shows the joint succession of brothers, whether reunited or not, and of sisters, when the estate consists of both moveables and immoveables: but the text of Yogísvara refers to a case when the estate consists of immoveables only, or of moveables only. This follows from the text of Prajápati, *viz.*,—"But when the estate consists of chattels and other property it goes, however, to the reunited; but the land and house shall be taken by the unassociated (whole brothers?) according to the share."[1] The term 'chattels', by the rule of 'the bulls and the beeves', signifies bipeds, quadrupeds and the like; 'the reunited' means, the reunited half-brothers. The correct reading of the text of Yogísvara is, "A half-brother though reunited does not take the estate of a half-brother."[2] Hence, when there is only immoveable property or only moveable property, then, by reason of the text of Yogísvara, a uterine brother though not reunited takes, but not a half-brother though reunited: when, however, there are both kinds of property, then agreeably to what is laid down in the text of Prajápati, the unassociated uterine brother

[1] Not found.

[2] Yájñavalkya, II. 139.

and sister as well as the reunited half-brother take in equal shares. This also is the meaning of the text of Manu.

This is not good. Since the defects of insertion (of terms not used in the text), forced construction, &c., are not wanting in the interpretation put by you; and what is declared in the text of Prajápati is not in conflict with the interpretation put by Vijñánesvara (on the text of Yogísvara). Accordingly, the author of the Madanaratna, adopting this interpretation, cites this very text of Prajápati in support of it. But agreeably to your interpretation, there is rather the defect of tautology unavoidable in the text of Yogísvara, for (agreeably to your reading) it is in the first part said—"A half-brother though reunited does not take the estate of a half-brother,"—and the very same thing, neither more nor less, is expressed in the last part, namely,—"not the reunited son of a different mother." And although an interpretation involving the defect of tautology, might even reluctantly be accepted for the purpose of making the text consistent with the text of Manu; still it would be improper to adopt a meaning which is liable to the objection of multiplicity for assuming another radical revelation.

7. Súlapáni, in his commentary on the Institutes of Yájñavalkya, says (while interpreting the above texts which are read by him in a different way):—A half-brother though reunited shall not take the property of a half-brother; the uterine brother alone though not reunited shall take, but not a reunited half-brother. If the reading be, "But a reunited half-brother may take the property, not a half-brother," then the meaning is that a half-brother being a half-brother, may not take the property though reunited. This text shows the succession of an unassociated whole brother, hence there is no defect of tautology.

This, however, is of the same nature with what is said by Srikara. The author of the Ratnákara, however, says that the reading (of the text of Yájñavalkya), as found in the Kalpataru, is "shall not take the property of a half-brother", but this must be a copying mistake, inasmuch as the reading found in the copies of the Institutes of Yájñavalkya, and in the commentaries such as the Mitákshará, the Párijáta and the Haláyudha, is—"not a half-brother, may take the property"; and the interpretations of that text, (in these commentaries), are in accordance with that reading.

8. The author of the Dáyatattva, however, says:—"But when there are a half-brother reunited, and a uterine brother not reunited, and when there are a whole brother and a half-brother both reunited: then two questions arise, which of the two is to succeed in each case.

"As to the first, it is said 'A half-brother, &c.', which signifies; let a half-brother, if he is reunited, take, but not a half-brother merely as such: but a uterine brother though not reunited may take, for the term, 'uterine brother', which occurs in the preceding

text is also to be construed with the latter proposition. Therefore when there are an unassociated uterine brother and a reunited half-brother, they both succeed; because the equality of the relation of reunion, and of the status of a whole brother, is expressed by the first part of the text.

"As to the second, it is ordained 'and not the son of a different mother who is reunited', the meaning is that when there is a whole brother reunited, the son of a different mother, though reunited, shall not take, *i.e.*, the reunited whole brother alone shall succeed; since though they are equally reunited, still the whole brother as such is preferred."

This is in conformity with what is said in the Mitákshará and the like, but it discloses great want of skill in interpretation.

9. The authors of the Smritichandriká and the Madanaratna say:—When, however, the father or the uncle is not reunited, then the unassociated half-brother succeeds; in his default, however, the unassociated father; failing him, the wife. Accordingly, Sankha says,—'The wealth of a sonless person who departs for heaven, goes to the brothers; in their default, let the parents take, or the senior wife."[1] The meaning is,—The property of a deceased sonless reunited (person) goes, in default of a reunited (coparcener) to an unassociated half-brother. Hence this text may also, as it is, be relative to the estate of a reunited person.

The author of the Mitákshará and others say that this text refers only to reunion, consequently there is no inconsistency in the succession of the parents and the wife on failure of the brothers.

It is stated in the Smritichandriká:—The term 'senior' has been employed in the text of Sankha for the purpose of indicating the possession of virtues such as the control of passions, not for the purpose of excluding the middlemost or any other junior wife The term 'in their default' should have been used over again, but in its stead, the particle '*or*' has been used, for the effect is the same. Since, the term '*or*' marks an alternative; but in the present instance there cannot reasonably be an alternative with reference to the ownership which is a determinate thing; for it is a rule laid down by the Sastras, also established by reason, that 'an indeterminate affirmation is not made with reference to a determinate thing'; therefore, here the term 'or' indicates an alternative with reference to 'default'; hence the result is the same. Accordingly the order is this: in default of the brothers, the father; in his default, the mother; in her default, the senior wife.

In the Madanaratna, however, it is said that the mother succeeds in the first instance; and then the father. The intention being, that it follows from the principle set forth in the Mitákshará, there being no text against the application of that principle to the

[1] II, Cole. Dig., 532, CCCCIII.

present case, like the text of Vishṇu relative to the estate of a person separated and not reunited. Accordingly, on account of the text of Vishṇu it has been held in that treatise, in the same way as in the Smritichandriká, that the term 'parents' in the text,—"The wife and the daughters also, &c.,"—means that the father succeeds in the first instance, in his default the mother. We have already dealt with this at great length.

Hence it appears that the above text of Sankha being in conflict with the text,—"The wife and the daughters also, &c.,"—is taken to be relative to partition after reunion, in order to avoid the conflict. The order of the heirs, which is laid down in the text, "The wife and the daughters also, &c.,"—and which is founded upon a principle and is relative to separate property,—is opposed by the order laid down by texts of law with reference to the present case. In this order, there is no principle; hence this order rests entirely upon the authority of the texts of law. Also Nárada says,—"But when the husband is dead, the wives, who are destitute however of (the husband's) brother, father and mother, and all the sapiṇḍas shall divide the (whole reunited) property agreeably to shares."[1] The meaning of this text is:—'The wives,' (*bháryás*) *i.e.*, the *patnis*, 'who are destitute of brother, father and mother', means in case the brother, father and mother of the husband do not exist. By deviating from the rule regarding the conjunctive compound, agreeably to which the father and mother who are entitled to greater respect than a brother, ought to have been placed first in the compound *abhrátripitri-mátriká́h* (rendered above into 'destitute of brother, father and mother',) and by combining the words in the reverse order, Nárada intended to show that the estate of a reunited sonless person goes to the brother in the first instance, in their default to the father, in his default to the mother, and in her default to the virtuous wife. Thus it is to be observed that the wife of a reunited person succeeds first, not in default of the legitimate and the subsidiary sons only, but on failure also of reunited (coparceners,) whole and half-brothers, father and mother. The meaning of 'all the sapiṇḍas, &c.', is this; those other than the brothers, father and mother, who are sapiṇḍas of a reunited person destitute of male issue,—such as the brother's sons, &c.,—shall, on his death, divide their own property which was reunited by their father and the like with the property of that sonless person, with his wives, 'agreeably to shares', *i.e.*, allotting the brother's share to the nephews and the husband's share to the wives, and so not modifying the shares.

10. On failure of the wife, the sister gets the share of a sonless reunited person. Thus it is ordained by Brihaspati,—"But if there be a sister, she is entitled to get a share of it, this is the law regarding the estate of a person destitute of issue, also destitute of

[1] Not found.

the wife and the father,"[1] the term 'also' (*cha*) suggests, "also destitute of the mother".[1]

11. On failure of the sister, the mere (*i.e.*, unasssociated) sapiṇḍas, that is, the nearest sapiṇḍas shall divide the estate left by a reunited person, agreeably to shares, *i.e.*, shall get the estate in the order of propinquity as declared by Manu in the text,—"To the nearest sapiṇḍa, the inheritance next belongs;" since the order of succession among these has not been expressly declared. Thus the same sage (Brihaspati) declares,—"If the deceased have no issue, nor wife, nor brother, nor father nor mother, then all the sapiṇḍas shall divide his property agreeably to shares."[2] "His property" signifies the property of a reunited person; "If the deceased leave no issue, &c.," means, if the deceased be destitute of those (heirs) the order of whose succession to the reunited estate has expressly been declared.

But it is to be observed that in default of the sapiṇḍas the estate of a reunited person, like the estate of a person separated, goes on his death to the samánodakas and the like in the order previously mentioned agreeably to the degree of propinquity. For there is no special text of law relative to the reunited estate, declaring the order of succession on failure of the sapiṇḍas.

12. If it be argued that as by reason of the text a reunited brother and the like succeed to the estate of a reunited person in spite of the wife and the like, so by virtue of the same text the reunited sons alone should inherit the estate of the father when there are both reunited and unassociated sons. The answer is that the argument is not tenable: since the term 'sonless' occurring in the previous text, is to be construed with this text; hence the death of a reunited person *without male issue,* is the cause of the succession (of a reunited co-heir); therefore, when a reunited person leaves male issue, then the text,—"But of a reunited (co-heir), &c.,"—cannot apply, since the circumstance of his being without male issue is wanting; consequently, in this instance, too, both descriptions of sons are equally entitled to take the father's share by reason of the text,—"The sons shall on the death of the parents divide their estate and debts in equal shares."[3] But only whatever remains after the enjoyment by a person reunited with his son, of that share which was previously allotted to him (on partition,) shall be separately adjusted; *i.e.*, whatever share would belong to the father at the time, shall be taken by the sons, dividing the same. Nor can it be contended that let not the term 'sonless' occurring in the previous text be construed with the text,—"But of a reunited (co-heir), &c." Because it would follow that even as regards the property of a reunited brother or the like who is not without male issue, his brother or the like will take his share to the exclusion of the male issue; and this would be opposed to

[1] Brihaspati, XXV. 75. [2] Brihaspati, XXV. 60.
[3] Yájñavalkya, II. 117.

the immemorial custom of all countries. And because if the text "But of a reunited, &c.", were relative without distinction to a person who has male issue as well as to one who is destitute of male issue, then this text could not reasonably be said to form an exception to the text,—"The wife and the daughters also, &c.,"—which is relative only to a person destitute of male issue; consequently, the above contention is contrary to the term "but", which marks an exception. Nor can it be argued (admitting the construction of the term 'sonless' with the text regarding reunion) that agreeably to the rule laid down by the learned, namely, "An adjective becomes significant if it may reasonably be applied, and if without it there would be inclusion of things not intended to be included",—this adjective (properly) refers only to one who is reunited with a brother or the like, for it becomes exclusive; and not to one who is reunited with his son, for as that which is to be excluded is wanting, its application would be unreasonable. Because in the absence of two separate propositions if the precept embodied in one proposition be operative sometimes in connection with the adjective and sometimes without it, then in consequence of the two-fold meaning of the same proposition caused by its construction and non-construction with the adjective, there would be variableness in the proposition consisting in the variableness in the precept. Besides, ownership in the property of the father or other ancestor is to be held to be caused by sonship, &c., alone, if not attended with degradation and the like disqualification, but not also if attended with reunion; by reason of multiplicity: and as the sonship, &c., belong equally to all (the male issue,) whether reunited or not, therefore the succession, to their property, of all the sons and the like without distinction is proper. Nor can it be said, that right (of the sons, &c., as such) to the property of the father and the other ancestors, ceases by partition. Because (if that were so) then it would follow that when all the sons are separated and not reunited, then the wife, &c., will become heirs as in default of male issue; and because the right of the father and son to each other's property is on the contrary laid down by Ápastamba and Hárita, thus they say,—"(The father) may, in his life-time divide the property and retire to a forest or adopt the order befitting an old man or may divide a small portion and retain the greater portion himself; and if he be pinched, may resume from them."[1]—"The order befitting an old man", means mendicancy (or the fourth order of life); 'be pinched', means, be reduced for want of food.

But if a son be born after partition, then (agreeably to what is said above, also) the sons who have been previously separated would have been entitled to the father's property, but they are debarred by the text of Brihaspati, namely,—"Those born before partition are not entitled to the share of the parents; nor one born after it, to the share of a brother. Whatever is acquired by a father separated from the son, belongs entirely to one born after

[1] II. Cole. Dig., 205, XXIII.

partition; those born before partition are declared to be not entitled. As in the property so in debts also, in gifts, pledges and purchases they have no claim on each other, except for acts of mourning and libations of water."[1]

13. The heir to the estate of a reunited person must maintain his wives and support his daughters till they are married as well as perform the ceremony of their marriage. This is declared by Sankha and Nárada after premising reunion,—"If any one of the brothers without issue die or enter a religious order, let the rest divide his wealth, excepting the wife's separate property. Let them allow a maintenance to his wives until the end of their lives, provided they preserve unsullied the bed of their husband; but if they behave otherwise, the brothers may resume their allowance. If he leaves a daughter, her paternal share is ordained for maintenance, she shall get her portion till marriage; afterwards the husband shall maintain her."[2]—"If they behave otherwise" means, if they do not preserve unsullied the bed of their husband, *i.e.*, if they be of bad character; the prefix *á* in *ásamskárát*, (rendered into 'till marriage',) signifies inclusion, hence the celebration of marriage also is included.

Thus ends the partition of reunited estate.

CHAPTER V.

WOMAN'S PROPERTY.

PART I.

1. Now, with a view to explain the partition of stridhana or *woman's property*, its nature is first determined.

On this Manu says,—"What is given before the (nuptial) fire, what is presented in the bridal procession, what is bestowed in token of affection, and what is received from the brother, the mother or the father; these six-fold are declared to be stridhana."[3]—The term 'six-fold' is intended, not as a restriction of a greater number, but as a denial of a less. Accordingly, Yogísvara uses the term 'the like' in the text,—"What is given by the father, the mother, the husband or the brother, what is received before the (nuptial) fire, what is presented on the husband's marriage to another wife, or the like, is pronounced to be stridhana."[4] Also, Vishnu declares more than six sorts of woman's

[1] Brihaspati, XXV. 18, 19 and 20.
[2] Nárada, XIII. 25, 26 and 27.
[3] Manu, IX. 194.
[4] Yájñavalkya, II. 143.

property; thus he says,—"What is given by the father, the mother, the son or the brother, what is received before the (nuptial) fire, what is presented on the husband's marriage with another wife, what is given by the *bandhus* or relations, and *anvádheyaka* or a gift subsequent to marriage; these are denominated woman's property."[1] Nárada says,—"What is received before the (nuptial) fire, what is presented in the bridal procession, likewise a gift by the husband, what is given by the brother and the parents; these six-fold property is declared to be stridhana."[2]—The term 'six-fold' is to be explained in the same way as in the text of Manu.

2. The term 'stridhana' or woman's property has been used (in the above texts) in its ordinary meaning, *viz.*, property whereof a woman is the owner, and not in a technical sense (as including only the enumerated items of property); for when the ordinary meaning is acceptable, it is not proper to adopt a technical meaning. Accordingly, Yogísvara has employed the term 'the like' on purpose to include what is acquired by the common means of acquisition, such as inheritance, purchase, &c.

If it be said:—If it were so, then the exclusion of certain kinds of property from the category of woman's property would be unreasonable; for a woman's ownership therein cannot be denied by reason of contradiction (with the above exposition;) thus Kátyáyana says,—"Among these, what is given conditionally or what is given under collusion by the father, brother or husband; that is not denominated woman's property."[3] 'Condition' is the restriction that this ornament or the like, which is given to you, is to be put on by you only on days of festivity, &c., and not at any other time; what is given with such a restriction is "given conditionally": "under collusion" means, with the intention of defrauding the co-heirs,—as if saying)—'This has been given to a maiden daughter, how can such property be partible?' It is also said by the same sage that what is acquired by means of mechanical arts, also what is presented out of affection by a friend or the like does become woman's property, thus,—"But whatever is acquired by means of mechanical arts, also what is received through affection from any other: therein the husband's ownership arises at that time; the rest, however, is pronounced woman's property."[4] It is upon the assumption that the term 'stridhana' is technical in its meaning, that what would, by reason of being given by a brother, &c., be included by the term 'stridhana' is excepted (in the first of the above texts;) hence a technical meaning is intended (by the above two texts) to be attached to the term woman's property, *viz.*, that stridhana means what is given by the father or the like excepting that (which is mentioned in the first of the above texts) or excepting what is gained by mechanical arts and the like (mentioned in the second text).

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[1] Vishnu, XVII. 17.
[2] Nárada, XIII. 8.
[3] Not found.
[4] *Ibid*, 589, CCCCLXX.

The answer is: In the above texts the denial is, not of their being woman's property, but of its consequences, such as distribution (by her choice amongst her heirs), &c. Accordingly, in the latter text it is said, "therein the husband's ownership arises". The meaning is that the husband and not the woman has independence in dealing with such property. In the first text, however, the denial also of the woman's right is possible, by reason of the employment of the terms 'condition' and 'collusion'; and it is universally known that no right accrues to such gifts, by reason of the text of Manu, namely,—"Collusive mortgage and sale, collusive gift and acceptance, and wherever a condition (or fraud) is found; all these shall be prevented."[1] The following text (of Manu,) namely,—"A wife and a son, also a slave; these three are incapable of holding property: whatever they acquire belongs to him whose they are,"[2]—is to be taken to refer, in the case of a wife, only to what is acquired by mechanical arts, &c., by reason of the simplicity of the supposition that both the precepts are founded on the same radical revelation.

3. The term 'gift before the nuptial fire' and the like are explained by Kátyáyana, thus,—"What is given to women at the time of their marriage, near the nuptial fire, is proclaimed by the wise as the women's property given before the nuptial fire. That again, which a woman receives while she is conducted from her father's house (to her husband's dwelling) is declared as woman's property under the name of gift presented in the bridal procession. Whatever, however, is given through affection by the mother-in-law or the father-in-law, or what is given on obeisance by touching the feet (of a woman,) is called an affectionate gift. Subsequent to marriage, however, what is received by a woman from her husband's family is called a gift subsequent, and so is what is likewise received from her own family. Whatever, however, is received as a price of household furniture, conveyance, milch-cattle and ornaments, is denominated fee or *sulka*. That which is received by a married woman or by a maiden in the house of her husband or of her father, from her brother or from her parents, is termed a kind gift."[3]—The reading (of the text defining a kind gift) as adopted in the Kalpataru and other works, is "from her husband" instead of 'from her brother'.) The terms 'presents before fire', &c., although they convey their derivative meaning, are still technical, inasmuch as they are applied only to the above descriptions of woman's property. It has been explained in the Madanaratna, that the price of household furniture, &c., which is taken from the bridegroom or the like for giving (in marriage) the bride, in the shape of bride's ornaments, is the fee or *sulka*. In the Mitákshará, however, it is said, that the fee or *sulka* is that which having been taken, the bride is given in marriage. But in both (the books), it is intended that the father or

[1] Manu, VIII. 165. [2] Manu, VIII. 416.
[3] II. Cole. Dig. 595, CCCCLXIV—V.; 596, CCCCLXVI.; 597, CCCCLXVIII.

the like takes it on the understanding that it is to belong to the bride; because, otherwise, in the absence of her right thereto, the application of the denomination of woman's property to it, would be unreasonable. But Jímútaváhana having adopted a reading (of the above text of Kátyáyana, defining the fee or *sulka*) in which there is the word *karminám*, workmen, instead of *karmanám*, acts, has explained the text in this way: "In order to have a work done by workmen on houses, &c., *i.e.*, by artizans, what is given as a bribe to a woman for inducing her husband or others (of her family who are the artizans), to do the work, is the fee or *sulka*. This itself is the price, as it is paid for her inducement." He has further said,—"Or the fee is what is described by Vyása in the text,—'What is given to bring her to her husband's house is called the fee or *sulka*.'—The meaning is, that what is given by way of bribe or the like, to induce her to go to her husband's house is the fee or *sulka*."[1] Both these descriptions of property belong to the woman, for to her alone they are given; hence it is easy to understand the application of the name 'woman's property' to these, in the same way as to other kinds of woman's property.

A gift on supersession (*ádhivedanikam*) is what is bestowed on the first wife on the occasion of espousing another wife. This is described by Yájñavalkya thus,—"To a woman whose husband marries a second wife, let him give an equal sum as a compensation for supersession, if woman's property have not been given to her; but if any have been assigned, let him allot half."[2]

4. Kátyáyana lays down a special rule regarding the grant of property by the father or the like, to females for their maintenance:—"The father, the mother, the husband, the brother or the *jnatis* or kinsmen of the same family, shall agreeably to their means, give to women stridhanam, not exceeding two thousand, excepting immoveable property."[3]—The meaning is, that property other than immoveables, extending to two thousand *kárshapanas*, shall be given according to the means. So also Vyása declares,—"But an allowance of property amounting to two thousand at the most shall be given to a female."[4] Kátyáyana by the term 'not exceeding two thousand', and Vyása by the term 'at the most', show that even a rich man is not to give more to women whom he is bound to maintain. This restriction, however, is to be understood to apply to what is given every year, and not to an allowance once for all. Hence there is no incongruity, if the property given for maintenance for many years exceed this amount; for it is for maintenance that the gift is made, but it is not possible that that for the whole life can be covered by merely two thousand (*kárshapanas*).

5. In the disposal of woman's property, however, females have not independence without the permission of their husband. This is

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[1] II. Cole. Dig., 592, CCCCLXXI.
[2] Yájñavalkya, II. 148.
[3] Not found.
[4] II. Cole. Dig., 600, CCCCLXXXII.

declared by Manu thus,—"Women shall not make any disbursement out of family property which is common to many, or even out of their own property without the permission of their husband."[1] —Disbursement (*nirhára*) means, expenditure.

But in the disposal of some kinds of woman's property, females have independence; this, Kátyáyana having described a kind gift, declares thus,—"The independence of women who have received a kind gift, is admitted (in respect of it,) for it was given by them out of kindness, for their maintenance. With respect to a kind gift, the independence, at all times, of women is proclaimed in making sale or gift according to pleasure, even when it consists of immoveable property."[2]

But as regards property given by the husband, they have independence in dealing only with property other than immoveables. This is declared by Nárada, thus,—"What has been given by an affectionate husband to his wife, she may, even when he is dead, consume it or give it away as she pleases, excepting immoveable property."[3] The meaning is, that the wife can only enjoy the immoveable property given by the husband by dwelling on it, &c., but cannot make a gift, sale, or the like. Some are of opinion that the text of Kátyáyana also, *viz.*,—"Let the sonless wife, preserving unsullied the bed of her husband, &c."—refers only to immoveable property given by the husband, since (if interpreted in this way) it embodies the same precept as the text of Nárada. But what it refers to, has been discussed by us while explaining the text,—"The wife and the daughters also, &c."

6. The males (of the family), however, have no power of disposal over any kind of stridhana, inasmuch as they have no ownership in it: this is declared by Kátyáyana,—"Neither the husband, nor the son, nor the father nor the brothers can assume the power over a woman's property to take it or give it away. If any of these persons forcibly consume a woman's property, he shall be compelled to make it good with interest, and shall also incur a fine. If such a person having obtained her consent amicably, consume her property, he shall be required to pay the principal, when he becomes rich (enough to pay it). But if the husband have a second wife and do not show honor to his first wife, he shall be compelled by force to restore her property though amicably lent to him. If food, raiment and dwelling be withheld from the woman, she may exact her due supply and take a share (of the estate) with the co-heirs."[4]

The meaning of the two couplets beginning with "But if the husband", is this: if the husband having taken the wealth of one wife lives with another wife and neglects the first, the king shall

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[1] Manu, IX. 199.
[2] II. Cole. Dig., 594, CCCCLXXV.
[3] Nárada, I. 28.
[4] II. Cole. Dig., 594, CCCCLXXV, and 599, CCCCLXXXI.

forcibly compel him to restore that wealth; and if the husband does not supply her with food, raiment and dwelling, then these also, or property sufficient for these, may be forcibly exacted by the wife. This also is to be understood to take effect when she is blameless; for a wicked woman is not entitled to obtain any sort of woman's property whatsoever, as is declared by the same sage,—"But a woman who is inimical, shameless, dissipator of wealth, or adulterous is not worthy of woman's property."[1]—By the expression 'is not worthy', it is indicated that what has been received by her may be forcibly taken from her: 'inimical' is one who is always engaged in committing acts against the will of the husband,—another reading is 'impudent' (*nirmaryádá* instead of 'shameless').

7. Devala says,—"Her subsistence, her ornaments, her fee or *sulka*, and her gains are the separate property of a woman. She herself exclusively has the right to enjoy it, her husband has no right to use it, except in distress. In case of consumption or disbursement without cause, he must refund it to the wife with interest."[2] 'Subsistence' or *vriddhi*, means, according to the Smritichandriká, what is given by the father or the like (relation) towards her advancement. In the Madanaratna, however, this is read as *vritti*, and is explained to mean what is given by the father or the like for subsistence. 'Gains' signifies what is received from any person, who makes the present for the purpose of pleasing Gauri or some other goddess: 'without cause' means, otherwise than in distress: 'disbursement' means, abandonment, *i.e.*, giving away; this is relative to gift and enjoyment that are not permitted by the wife, but if she permits, there is no fault even when there is no distress: the term 'exclusively' in the passage 'she herself exclusively' is intended to exclude her children; because the husband's exclusion is laid down by the passage 'her husband has no right to use it', and because the husband being excluded, the exclusion of the brother and other relations who are more distant than the husband is, by the rule of the staff and the cake, established. From the phrase 'except in distress', it appears that there is no fault (if the wife's property be used) in distress; hence the same sage declares in the concluding text,—"Is entitled to use woman's property, also for the relief of the distress of the son."[3]—The term 'husband' (occurring in the preceding text) is to be construed with this text. The term 'son' is intended to indicate the family; the meaning is, for the relief of the distress, *i.e.*, the pain caused by the want of food, &c., of the family. The term 'also' shows that the husband is entitled to give away or consume the wife's property without her consent, in any other difficulty caused by the want of money.

If it be said: How can it be shown by this text that a person is entitled to give away or consume another person's property

[1] II. Cole. Dig., 602, CCCCLXXXIV. [2] II. Cole Dig., 597, CCCCLXXVIII.
[3] II. Cole Dig., 597, CCCCLXXVII.

without the consent of the owner; for it would be a contradiction in terms: in the case of consent, however, there is no difficulty although there be no distress. The answer is, that by virtue of the texts (to that effect, it is to be admitted that) he has ownership itself over such property to use it for such purposes; so there is no defect. Accordingly, Yogísvara says,—"A husband, if unwilling, is not liable to make good the property of his wife, taken by him in a famine or for the performance of some religious duty or during illness or while under restraint."[1]—'For the performance of some religious duty', means, for the performance of necessary, daily or occasional, ceremonies; 'while under restraint' means, while arrested by the king for the levy of a fine or the like: but Váchaspati says that the term '*samvratirodhake*' (rendered into 'while under restraint') is an adjective qualifying 'illness', and that it means preventing the pursuit of avocations. Also the proposition, "if unwilling, is not liable to make good"—is to be understood to refer to the case of inability to refund on account of poverty and the like; but if he is able to repay, then even what is taken in a famine and the like, must be refunded: when this text may reasonably be interpreted in this very way, it would be improper to maintain that he may choose not to refund even if he is able to do so. As the term 'husband' is used in the text, therefore it is to be known that even in the event of distress the husband alone but no other (relative) has the right to take a woman's property and to repay it at his desire.

8. What the husband promised to give to his wife must, when he is dead, be given to her by the son and the like. This too is declared by the same sage,—"Property promised by the husband to his wife must be paid by his sons, just as his debts."[2]—The term 'sons' includes grandsons and great-grandsons, by reason of the expression 'just as his debts'. By this it is shewn that although the right of the sons accrues to their mother's property by birth, still there can be no partition, while she is alive.

Thus woman's property has been described.

PART II.

1. Now, the partition of woman's property is explained.

On this Manu says,—"But when the mother is dead, all the uterine brothers and the uterine sisters shall equally divide the maternal estate."[3] Since in this text the term 'and' is used which conveys the same meaning as the conjunctive compound, therefore it is shewn that the uterine brothers and sisters are jointly entitled to take the mother's estate. The term 'uterine' is used to debar the children of a different mother.

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[1] Yájñavalkya II. 147.

[2] II. Cole. Dig., 601, CCCCLXXXIII.

[3] Manu, IX. 192.

Devala says,—"A woman's property is common to sons and maiden daughters, when she is dead; but if she dies without leaving issue, let her husband, mother, brother or father take it."[1]—In this text, however, the conjunctive compound itself (of sons and daughters, *viz.*, *puttra-kanyánám*) is used, hence the joint succession of sons as well as daughters is clear.

But this (joint succession of the son and daughter) is relative to two descriptions of woman's property, namely, the gift subsequent and what is through affection given by the husband. Accordingly, Manu himself says,—"The gift subsequent and what has been given by the affectionate husband; these become the property of the children of the deceased woman though the husband is alive."[2]—'The gift subsequent' as defined before, also what has through affection been given by the husband; 'these' descriptions of a woman's property belong to 'children', *i.e.*, sons and daughters of the deceased woman. 'Although the husband is alive' means, in spite of the surviving husband: since the locative case in '*patyau*' (husband) is indicative of disregard. The term 'children' in this text being used without any qualification, the co-equal ownership of the male and female children is expressed; hence they are to take the maternal estate in equal shares: and not, however, the sisters in the first instance; in their default the brothers.

'The sisters' in the text of Manu (para. 1) are to be taken to be unmarried. Accordingly, Brihaspati says,—"A woman's property appertains to her issue; the daughter also is a sharer in it; but when there is an unmarried daughter, the married one obtains a mere token of respect."[3]—The term 'issue' means, sons; since 'the daughter' is separately mentioned: 'sharer in it' means, an equal sharer with a son: 'a mere token of respect' means, that she obtains something, as a token of respect (due to her), in proportion to it, but not an equal share with a son.

In default of the unmarried daughters, the married ones also, whose husbands are alive, participate with their brothers. This is declared by Kátyáyana,—"The sisters whose husbands are alive shall succeed together with their brothers."[4]

At the time of partition something should be given also to the daughter's daughters. Accordingly Manu says,—"If there be daughters of the daughters, to them also, according as they deserve, should be given through affection something out of their grandmother's property,"[5]—'according as they deserve', means, regard being had to propriety and to poverty and the like. Nor can it be argued that as the daughter's daughters have not then any right, wherefore is anything to be given to them? Since, just as in the case of paternal property, although the daughters have no right of

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[1] II. Cole. Dig., 603, CCCCLXXXIX.
[2] Manu, IX. 195.
[3] Brihaspati, XXV. 87.
[4] II. Cole. Dig., 607, CCCCXCIII.
[5] Manu, IX. 193.

inheritance when there are sons, still a quarter share is to be allotted to them by virtue of texts; the same reason holds good in this instance also. Accordingly, the term 'through affection' is used. The distinction is, that in the present instance it being declared that the gift is to be made through affection, it is also indicated that it is optional; but in the other instance, the allotment is compulsory by reason of the expression of censure in the text—"those that are unwilling to give become degraded".[1]

2. But the *yautaka* property (the nuptial presents) of the mother belongs to the maiden daughters alone; not to sons nor to married daughters. This is declared by Manu himself,—"But the *yautaka* or the nuptial present of the mother is the share of the unmarried daughters alone."[2]

According to the root *yu* to unite, whatever is, at the time of marriage, given to the bride and the bridegroom sitting upon the same seat, is called *yautaka* through the derivation, 'what belongs to the *yutau* (or the two united) is *yautaka*'. But some (commentators, among whom the author of the Dáyabhága is one) maintain that on marriage the corporeal union of the man and wife takes place, by reason of the Sruti, namely,—"(His) bone (becomes identical) with (her) bone, flesh with flesh, skin with skin,"—the meaning of which is, that the bones and the other parts of the husband and wife become one. Others (among whom the author of the Dáyatattva is one) say that on marriage the union (of the husband and wife) arises, since it is indicated in the text (which the bride and the bridegroom are made to recite at the time of the marriage,) namely,—"What is thy heart, let that become mine, what is my heart let that become thine." In the Nighantu it is said 'What belongs to the two united or *yutau* is *yautaka*.' The term is also read as *yautaka* since it is stated in the Kosa (or authoritative vocabulary,—"What is *yautaka* is also *yautuka*." Devasvámi says: The property of the mother which was received by her in the house of her father is called *yautaka*, such property being distinct from what was received in the house of her husband; since the term '*yauta*' signifies also disunion; as it is said in the Dhátupatha that 'the root *yu* means, to unite or to disunite', and it is used in this sense, thus, 'on completion of the *yuta* or disunion'. This, (*i.e.*, what is said by Devasvámi) is not good. For it is merely an assumption, inasmuch as there being no criterion for determination, it may equally be said that the term *yautáka* means the property received in the husband's house, such property being distinct from what is obtained in the father's house.

When there are more than one maiden daughter, then agreeably to the maxim, 'Equality is the rule where no distinction is expressed', their shares must be equal, no distinction being expressed.

3. The property of the mother excepting these three kinds,

[1] Manu IX. 118. [2] Manu IX. 131.

(*viz.*, gift subsequent, affectionate gift of the husband and *yautaka*), devolves on her daughters (in the first instance and not on her sons). Amongst them also, first on the unmarried daughters; in their default, on those that are unprovided; on failure of them, on those who are provided, and whose husbands are living; failing them, on the widowed ones. Accordingly, Gautama declares,—"A woman's property goes to her daughters, unmarried and unprovided."[1]—It is explained by Aparárka and the author of the Kalpataru that 'unprovided' means childless, indigent, neglected (by the husband) or widowed. Vijñánesvara and others attach to the term the first two of the above meanings. In this text also although the general term 'woman's property' is employed, still it is to be taken to refer to property other than the three descriptions mentioned above. This is said also in the Smritichandriká and the Madanaratna.

4. But Jímútaváhana and Raghunandana maintain that the text of Gautama cited above, (§ 3) the text of Nárada, namely,—"The daughters (shall take) their mother's (property;) in default of daughters, the offspring,"[2]—the text of Kátyáyana, namely,—"But in default of the daughter, that property devolves on the son,"[3]—the text of Yogísvara, namely,—"Daughters share the residue of their mother's property after payment of her debts; in their default, the issue,"[4]—and other texts of law, declaring the succession of daughters to woman's property, refer to *yautaka* or nuptial presents only, in conformity with the text of Manu, namely,—"The *yautaka* is the share of the unmarried daughters alone,"—and with the text of Vasishṭha,—"Let the females divide the nuptial present of their mother:"[5] otherwise there would be a conflict with the text of Manu cited before (§ 1). The term '*párinayya*' (in Vasishṭha's text, rendered into 'nuptial present') has been explained by them to mean what is received at marriage (*parinaya*,) that is to say, *yautaka*. But in the Kalpataru and the Vivádachintámani, the reading is *párinávya*, which is explained to mean the paraphernalia of a woman, such as the mirror, comb and the like.

5. But Vijñánesvara says:—

Every description of woman's property goes first, even when there are the sons and the rest, to the daughters, the daughter's daughters and the daughter's sons; and in their default to the sons and the rest. The succession to the estate of a childless woman will be explained hereafter. On the text of Yogísvara, namely,—"Daughters share the residue of their mother's property after payment of her debts; in their default the issue"—the term 'their' relates not to daughters alone, but also to daughter's daughters and daughter's sons, by reason of the text of Nárada, namely,—"The

[1] Gautama, XXVIII. 24.
[2] Nárada, XIII. 2.
[3] II. Cole. Dig., 607, CCCCXCIII.
[4] Yájñavalkya, II. 117.
[5] Not found.

daughters (shall take) their mother's (property); in default of the daughters, the offspring." In this text (of Nárada) the term '*tat*' in the compound *tadanvayah* (the offspring) refers to the contiguous term daughters (and not to the term 'mother's' which is more remote). 'Accordingly' the daughters' offspring including the daughters' daughters and the daughters' sons (is meant by the term *tadanvayah*). Amongst them also first the daughter's daughter (succeeds); in her default, the daughter's son. In the text of Yogísvara, which will be cited below, the term 'daughters' in the passage "but if she leave progeny, it will go to the (daughter's) daughters,"—means the daughter's daughters; for, otherwise, there would be tautology, as he himself has clearly declared the succession of daughters in the text,—"The daughters share the residue of their mother's property, &c." The succession of the daughter's son follows from the general expression "the daughters' offspring" (Nárada's text).

But the right of the sons follows from the uni-residual conjunctive compound *pitroh* ('of the parents') in the text (of Yájñavalkya,)—"After the death of the parents the sons shall equally divide the heritage and the debts:" and this has been already explained. Also in the text,—"The daughters (shall take) the mother's (property); in their default, the issue,"—the son and the like are intended by the term 'issue', since it is proper to construe it with the term 'mother's', and since 'the daughters' are separately mentioned. But there can be no defect of tautology (attributable to this interpretation of the above two texts of Yájñavalkya) since this (latter) text is intended to establish the succession of the sons in default of the daughters, (while in the first text the mere right of the sons to inherit, is mentioned).

But the meaning of the text of Manu, namely,—"But when the mother is dead, &c.", (§ 1) is this: 'All the uterine brothers shall equally divide their maternal property,' when their succession opens, 'and the uterine sisters' when their right takes effect. But the meaning is not that both (brothers and sisters) shall together divide; for, in the absence of the conjunctive compound or the uni-residual conjunctive compound, the mutual union (of brothers and sisters) does not appear; but the term 'and' (which it may be contended, bears the same meaning as a conjunctive compound) may reasonably be explained to express the union (of 'brothers and sisters') merely so far as regards their grammatical construction, both being nominative to the verb 'divide'. As for example, if it is said, 'Devadatta *and* Yajnadatta shall pursue agriculture', it does not (necessarily) appear that they must jointly do the same. Although, the right of both (sons and daughters) to succeed to their mother's estate has been declared in other texts, still this text is intended to prohibit, by the employment of the term 'equally', the mode of unequal distribution on account of specific deductions and the like.

The term 'uterine' is used (in the above text of Manu) for the

purpose of excluding the brothers and sisters sprung from a different mother. Hence it is that Manu (in another text) declares that the property of a low caste woman is taken by the daughter of her co-wife of a superior class, though not begotten by herself, and on her default by her progeny; thus,—"The wealth of a woman, which has been in any manner given to her by her father, let the Bráhminí (step) daughter take; or let it belong to her offspring."[1] Here by the term 'woman' is intended a woman of the Kshatriyá or the like (inferior) class, having no issue; and the term 'Bráhminí' is illustrative, meaning, belonging to a superior class. This (text) forms an exception to the rule that 'the property of a childless woman, appertains to the husband'. Hence the daughter of a Kshatriyá co-wife takes the property of her childless step-mother of the Vaisyá class, and the daughter of a rival wife of the Vaisyá class takes the property of her Súdrá step-mother without issue; and in her default her children; and in their default, the text,—"The property of a childless woman appertains to the husband,"—is applicable to such property.

Hence the daughters and the rest are entitled to take the property of a woman leaving issue, in the first instance; and after them the sons and the like.

6. On this Jímútaváhana says: Since, although a conjunctive compound (of the terms 'brothers' and 'sisters') is not employed in the texts of Manu, Brihaspati, Sankha and Likhita, yet the same meaning (that is expressed by a conjunctive compound) is conveyed by the term 'and' which signifies conjunction; since in the text of Devala the conjunctive compound itself 'of sons and daughters', *viz.*, *puttra-kanyánám* is used; and since, for the sake of consistency (of this text of Devala with the texts of Manu and the rest), it is proper that the term 'and' in those texts (of Manu and the rest) also, should denote the mutual union (of brothers and sisters connected by it), therefore it is reasonable to say that brothers and sisters shall together take the property, dividing the same. Besides if the daughters alone were entitled to take the entire property of their mother, then the special text with respect to the *yautaka* or nuptial presents would be meaningless. And it is not reasonable to say that this text (regarding *yautaka*) is intended to exclude the married daughters, as in it the term "unmarried daughters" is employed; because their exclusion, as regards all kinds of stridhana, is declared in the texts of Gautama and the rest, and because it cannot but be admitted that on failure of the unmarried daughters, the married ones are entitled to take even the *yautaka*. Hence the distinction is, that joint succession alone of sons and daughters, is intended by Manu and the rest, to be relative to the presents before the fire, and other kinds of woman's property; but the succession of the daughters alone, to be relative to *yautaka* or nuptial presents. But the terms 'gift subsequent'

[1] Manu, IX. 198.

and 'affectionate gift of the husband' used by Manu in another text, are intended to include other descriptions of woman's property such as 'presents before the nuptial fire', &c.; for, otherwise, the separate text regarding the *yautaka* would be useless.

This is the opinion also of the author of the Dáyatattva and of others.

7. As regards this (contention) it appears that, as there is no authority to support the view that the terms 'gift subsequent', &c., mentioned (in the text of Manu) are intended to be illustrative, therefore to all kinds of the mother's estate excepting these two (*viz.*, the gift subsequent and the affectionate gift of the husband), the succession of the daughters takes place in the first instance; and on failure of them, the succession of the sons. The special provision, however, concerning the *yautaka* is intended to indicate the exclusion of the married daughters and the like. If it be said that their exclusion is common to other kinds of woman's property (and not peculiar to the *yautaka*, consequently the special provision is useless), the answer is, true; but (the distinction is that) the exclusion is not unconditional (as regards other kinds of woman's property), whereas in the case of *yautaka* it is unconditional. Accordingly, it is held by the author of the Smritichandriká, and others that on failure of the maiden daughter the *yautaka* appertains to the husband or the like, alone, according to the form of marriage, and not to the married daughters and the like.

But what is intended by Professor Vijñánesvara is this: The text (of Yájñavalkya) which generally lays down that woman's property is to be inherited by the daughters, can only be restricted in its application, if there be no another text which admits of no other interpretation excepting the one that restricts the first text. But it cannot be contended that the texts of Manu and others, establish the joint succession of sons and daughters, and admit of no other explanation. For these texts may be explained to establish the son's right of inheritance. Nor can it be contended that the joint succession of the sons and daughters is indicated by the term 'and' (in some texts) and by the conjunctive compound (in the text of Devala, § 1). Because these may as well be explained to express the construction (of both the brother and sister or the son and daughter) as the persons who are to effect the division. Otherwise, when the uni-residual conjunctive is used in the text,—"The wife and the daughter also, the parents (*pitarau*), &c.,"—and the conjunctive compound is used in the text,—"it appertains to the mother and the father (*máta-pitroh*)",—the succession of the mother and the father, one after the other, which is maintained in all the commentaries (on law), would be unreasonable. In that instance it is said that, consistently with the text of Vishṇu and the like, the compounds may be explained to express no more than the association (of the component words) as regards grammatical construction, but that the order of succession, one after the other, of the persons expressed by the

words, though at variance (with the grammatical construction), is not incompatible (with it). Similarly, in this instance also, the order of succession, one after the other, (of the sons and the daughters,) is expressed by the text of Yogísvara, namely,—"On failure of them the issue,"—and by the text of Kátyáyana, namely,—"But in default of the daughters, the inheritance devolves on the sons;" and in conformity with these texts, it is proper to explain the conjunctive compound and the term 'and' (used in other texts) to mean no more than the association (of the terms 'sons' and 'daughters') for grammatical construction: but it is not proper to say that agreeably to the conjunctive compound and the term 'and' (occurring in other texts) these texts are to be interpreted to bear a different meaning (from what appears on the face of them). Besides, there would be the fallacy of mutual dependence: since, if the joint succession (of sons and daughters) be established, then the texts (declaring the succession of daughters alone) are to be restricted in their application; but if these texts be restricted in their application, then it can be ascertained that the texts (in which the conjunctive compound or the term 'and' is used) intend joint succession (of sons and daughters).

It cannot be argued that (agreeably to the above view) the special text (of Manu, § 1,) regarding the gift subsequent and the like would be meaningless. Since this text may have a meaning, if it be interpreted in the same way in which the text regarding the *yautaka* has been explained in the Smritichandriká. Or all the texts may have a meaning if interpreted in this way: the mere right of inheritance of the children being established by the text (of Manu regarding the gift subsequent and the like) in which the term 'gift subsequent' is intended to be illustrative, the equality (of shares) and the like are laid down by the texts like—"But when the mother is dead, &c." (§ 1). Thus there is no difficulty.

The venerable Vidyáranya, however, has given both (the above interpretations, the first of which is) according to the Smritichandriká and (the second according to) the Mitákshará, but he has not passed any opinion.

8. But the succession, before the sons and the like, of the daughter's daughter, and after her, of the daughter's son is unanimously admitted by the authors of the Mitákshará, the (Smriti) Chandriká and the Madanaratna as well as by the venerable Vidyáranya.

But Jímútaváhana and the author of the Dáyatattva say:—In default of the daughters, the succession of sons alone takes place, but not the succession of the daughter's daughter and the like, and afterwards that of the sons. Since, in the text of Nárada, namely,—"The mother's (property), the daughters (shall take); in default of daughters, the issue"—the term 'issue' which signifies the issue in the shape of the son and the like, cannot properly be construed with 'daughters'. For the term 'daughter', which signifies a particular sort of progeny, cannot possibly be

construed with another (word 'issue' signifying) progeny, as there is no mutual requirement (of the words) both being alike. Nor is the want of mutual requirement affected by the construction (of the term 'issue') with the pronoun *tat* (her or their), for this pronoun (relating as it does agreeably to the opposite view, to the term 'daughters') must present the idea of daughters as such. Besides, as in the text of Yájñavalkya (§ 4), the term 'daughters' has the termination of the first or nominative case, and the pronoun 'of them' (*tábhyah*), has that of the fifth or ablative case, they cannot be construed with the term 'issue' which requires a word in the genitive case to be construed therewith; hence it is to be construed with the term 'mother's' though it is separated by the intervention of other terms. Therefore consistently with the text of Yájñavalkya the meaning of the term in the text of Nárada also, is, mother's issue such as sons and the like, but not the daughter's issue. Moreover, conformably with the text of Baudháyana, namely,—"Male issue of the body (*angaja*) being left, the property must go to them,"[1] —the succession of the son alone as an immediate issue of the body is proper by reason of propinquity, but not of the daughter's son and the like who are mediate descendants not born of her person.

This is erroneous. For if a word signifying progeny could not be construed with another word denoting progeny, then there could be no such construction in the case of the son and the like also. If this argument be met by saying that there can be no objection to the construction of two words signifying progeny when one is expressed to be the progeny of the other, then the same may be said in this instance too. (And it must be so said,) for otherwise there could be no construction even in such a case, as 'the daughter's son'. Therefore this (objection of Jímútaváhana) proceeds only from ignorance of grammatical construction. In the text of Yájñavalkya, however, although the son and the like alone are expressed by 'the mother's issue,' still this text merely recites the right of the sons which has already been laid down in the text,—"On the death of the parents, the sons shall equally divide the heritage and the debts,"—for the purpose of showing that the liquidation of the debts and the default of the daughters are the conditions of their right: and there can be no inconsistency if their right takes effect even after the daughter's sons. But the text of Baudháyana, namely,—"male issue of the body being left, &c."—which may be taken to establish by its generality the son's right of succession to the estate of the mother, or to establish generally the right of sons and daughters as the term *angaja* (rendered into 'male issue') signifies any child,—ought to be interpreted with reference to a propinquity which is not inconsistent with any other text. So this, (*i.e.*, the argument drawn from this text,) has no force.

9. (The heir to woman's property) on failure of issue is declared by Yogísvara,—"If she die without issue, her kinsmen shall take

[1] Baudháyana, I. 5, 11, 11.

it."[1]—'If she be gone', *i.e.*, if she die 'without issue', *i.e.*, without leaving descendants from the daughter to the great-grandson, 'her kinsmen', *i.e.*, such as are mentioned in the following couplet, 'shall take it', *i.e.*, the woman's property.

The same sage declares the succession of the kinsmen in different ways according to the different forms of marriage, thus,—"The property of a childless woman, (married,) also in the four forms of marriage, of which (series of four) the Bráhma stands in the beginning, goes to her husband; but if she is a mother, it belongs to her (daughter's) daughters: and in other forms of marriage, it goes to the father,"[2]—'The four forms of marriage are, the Bráhma, the Daiva, the Ársha and the Prájápatya: the Gándharva also is included, by force of the term 'also'. Or 'the four forms' may be taken to be exclusive of the Bráhma, and to include the Daiva, the Ársha, the Prájápatya and the Gándharva; for the compound *bráhmádishu* (rendered into, 'of which the Bráhma stands in the beginning',)—being a *bahuvríhi* or a descriptive adjective, the attribute expressed by it may be taken to have no reference to the predication. By this (interpretation) is removed the disagreement (of this text of Yájñavalkya) with the following text of Manu, namely,—"It is ordained that the property (of a woman married) in (the forms of marriage called) the Bráhma, Daiva, Ársha, Gándharva or Prájápatya, shall belong to the husband alone, if she die without issue."[3]

The property of a childless woman married in the Bráhma or the like form of marriage belongs to her husband, and on failure of him to the husband's nearest relations. For the nearness to the owner being debarred by the husband, preference ought to be given to the nearness of the husband.

But if a woman be married 'in other forms of marriage', *i.e.*, in the Ásura or the like, 'it goes to her father', *i.e.*, to the mother and the father, since the term 'father' (*pitri*) is the result of the uni-residual conjunctive compound (of mother and father). Amongst them also, it goes to the mother in the first instance, and after her to the father according to the principle set forth while explaining the term 'parents' (*pitarau*) in the text,—"The wife and the daughters also, the parents, &c."—there being no other text against the application of that principle to the present case. Accordingly, in the text,—"But the property given to a woman (married) in the Ásura or the like forms of marriage, is ordained for the mother and the father, if she die without leaving issue,"[4]—Manu shows the priority of the mother, by placing first the term mother in the conjunctive compound *mátá-pitroh*.

Besides, as it is expressly declared that the father inherits the property of a maiden on failure of the mother, so the same order

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[1] Yájñavalkya, II. 144.
[2] *Ibid*, II. 145.
[3] Manu, IX. 196.
[4] *Ibid*, IX. 197.

is proper in this case also. Thus Baudháyana declares,—"The wealth of a deceased maiden, let the uterine brothers themselves take; on failure of them, it shall belong to the mother; in her default, to the father."[1] On failure of the mother and the father, it goes to their nearest relations.

In all the above-mentioned forms of marriage without distinction, if the woman be 'a mother', *i.e.*, have issue, her property belongs to her 'daughters'. It has already been mentioned that by the term 'daughters' in this text (para. 2) the daughter's daughters are intended. The daughter's daughters also inherit in the order of the unmarried ones, &c., by reason of the text of Gautama and others. And it has previously been stated that when the daughters take the property, something should through affection be given to the daughter's daughters. When the daughter's daughters have their mothers different, and those sprung from one mother are unequal in number to those sprung from another, they shall divide their grandmother's property according to their mothers, just as grandsons do according to their fathers; for Gautama declares,—"Or let the share of each class be according to the mother."[2]

10. But Jímútaváhana says:—This text lays down a rule regarding only that wealth which is received at the time of the celebration of marriage in the Bráhma or the like forms, but not regarding the entire property of a woman married in any of those forms. Because the connection (of the words) being, "the property, in (the forms of marriage called) the Bráhma, &c.",—if the time of the celebration of marriage be indicated, the term ('in the Bráhma, &c.',) has a metaphorical meaning, in relation to time present; but, if a woman married in those forms be intended, it has a metaphorical meaning in relation to the past ceremony of marriage: hence the latter meaning is less approved than the former.

The same is the opinion of his follower, the author of the Dáyatattva.

This is not right. For it being generally laid down in the preceding text that the kinsmen shall take the property of a childless woman, the question arises, what sort of kinsmen shall take the property of what description of a childless woman? Therefore it is proper to say that the terms "Bráhma", &c., are intended to qualify her (*i.e.*, the childless woman). As for the argument founded upon a consideration of the relation to the present and past time;—that is worthless. Because in both (the meanings) the quality of being past is the same when the partition is made (gift and marriage being then both past); and because the quality of being present at the time of marriage is of no importance; also because the connubial relation (of the woman) effected by the marriage, is of greater importance.

[1] Not found.

[2] Gautama, XXVIII. 17.

11. But whatever may be the form of marriage, the property received by a woman from her parents subsequent to the marriage, belongs to her brothers alone. This is declared by Kátyáyana,—"But whatever immoveable property has been given by the parents to their daughter, goes always to her brothers, if she die without issue."[1]

But Visvarúpa and Jímútaváhana say:—What had been given to her by the parents before her marriage, goes to the brothers; because what is received after marriage becomes 'gift subsequent', and what is received at the time of marriage goes, according to the form of marriage, either to the husband or to the parents.

This is not tenable. For there is no conflict (of this text with any other text,) as this text is relative to immoveable property. Nor can it be argued that when the brother succeeds to immoveable property, his succession to moveable property follows from the rule of 'the staff and the cake' (*a fortiori*). For that rule is not applicable to what forms an exception.

12. But the fee or *sulka* belongs to uterine brothers alone, by reason of the text of Gautama, namely,—"The sister's fee or *sulka* belongs to the uterine brother."[2] On failure of the uterine brother, it goes to the mother; for the same sage says,—"After them, it belongs to the mother: but some say, (the mother inherits) before them."[3]—The latter is the opinion of others.

13. What was given to a woman by her *bandhus* (or consanguine relations) belongs, if she die without issue, to her *bandhus*, in the first instance, failing them, to her husband, by reason of the text of Kátyáyana, namely,—"What was given by the *bandhus* appertains to the *bandhus*; on failure of them, it goes to the husband."[4]

14. But when there is a failure of the above-mentioned heirs to a childless woman's property, Brihaspati ordains,—"The mother's sister, the maternal uncle's wife, the paternal uncle's wife, the father's sister, the mother-in-law and the wife of an elder brother are pronounced similar to mothers: if they leave no issue of the body, nor son (of a rival wife,) nor daughter's son, nor their son, the sister's son and the rest shall take their property."—Here by the term 'aurasa' or 'issue of the body', both sons and daughters are included; for they debar all (other heirs,) and the order in which they debar others has previously been mentioned. And by the term 'son', is intended the son of a co-wife; for Manu declares,—"If among all the wives of the same person, one be a mother of a son, then all of them become by that son mothers of male issue: this is ordained by Manu."[5] But the term 'son' is not intended to be

[1] II. Cole. Dig., 618, DIX.
[2] Gautama, XXVIII. 25.
[3] Gautama, XXVIII. 26.
[4] II. Cole Dig., 620, DXII.
[5] Manu, IX. 183.

in apposition with the term 'aurasa' or issue of the body; because in that case it would be useless, and because the sister's son and the rest would be heirs although the son of a co-wife be living; and that would be contrary to immemorial custom. The pronoun 'their' or *tat* in the phrase 'their son' relates to the terms 'issue of the body' and 'son of a co-wife', though they are separated (by other words,) and not to the term 'daughter's son' though it immediately precedes; because the son of a daughter's son is not competent to offer oblations. Hence on failure of heirs down to the daughter's son, first the 'aurasa' inherits, after him his sons and grandsons. For it is proper that the succession should devolve on them, inasmuch as they are competent to present the pinda and are liable to discharge the debts, by reason of the text,—"Debts are to be liquidated by sons and son's sons."[1] In their default, the son of a rival wife, his son and grandson (become heirs in their order); by reason of their being, under the circumstances, the giver of the pinda, and the liquidator of debts, and by reason of the text of Manu, cited above. Hence on failure of these, the sister's son and the rest alone, in spite of the sapiṇḍas, such as the father-in-law, are, by virtue of this text (of Brihaspati) which is not reconcileable in any other way, entitled to succeed, according to their comparative propinquity, to the property of their mother's sister and the rest.

15. But the daughter-in-law and others (of the same sex) are entitled to food and raiment only; for the nearness as a sapiṇḍa is of no force when it is opposed by express texts: since a text of the Sruti declares,—"Therefore women are devoid of the senses and incompetent to inherit,"[2]—and a text of Manu, founded upon it, says,—"Indeed the rule is that, devoid of the senses, and incompetent to inherit, women are useless."[3] The conclusion arrived at by the author of the Smritichandriká, Haradatta and other southern commentators as well as by all the oriental commentators such as Jímútaváhana, is, that those women only are entitled to inherit, whose right of succession has been expressly mentioned in texts such as,—"The wife and the daughters also, &c.,"—but that others are certainly prohibited from taking heritage by the texts of the Sruti and of Manu.

Thus ends the partition of a woman's property.

CHAPTER VI.

Partition of Concealed Property.

1. Now is explained the mode of distribution of that which was at the time of partition, concealed by any one (of the co-heirs), but is subsequently discovered. On that (subject) Manu says,—

[1] Yájñavalkya, II. 50.

[2] Baudháyana, II, 2, 3, 46.

[3] Not found.

"When all the debts and wealth (have been justly distributed according to law, if anything be afterwards discovered, the whole of it shall be equally distributed."[1] Yogísvara declares,—"Effects which have been stolen by any one of the co-heirs, and which are discovered after the separation, let them again divide in equal shares: this is a settled rule."[2]—Here, from the use of the term 'equal' it appears that the (mode of unequal) distribution with specific deductions is prohibited: by the term 'divide' it is indicated that the property shall not be taken by him alone who discovers it, and that a smaller share shall not be allotted to him who concealed it.

2. Some (commentators) assert that, when the (above) texts may have a meaning (if interpreted) in this way, the concealment (by a co-heir) of joint property does not constitute the offence of theft, inasmuch as it was taken under the belief of its being (his) own. This is foolish. For in joint property there being also the right of other (co-heirs), it cannot be denied that there is 'the wrongful taking of another's property',—which is the meaning of the term 'theft'. If it be said that there is no theft as it was not taken with the belief of its being another's. (The answer is:) it is not so, since concealment necessarily involves the belief of its being another's; accordingly the term 'stolen' is employed (in the above text of Yájñavalkya). (If it be asked) has not Manu in the text—"The eldest (brother) who out of covetousness defrauds his younger ones, shall forfeit the right of the eldest and his share, and shall be punished by the king"[3]—condemned the eldest alone and not the younger ones in case of misappropriation of common property? (The answer is) true: but when an act which may be committed, is affirmed to be an offence if committed even by the eldest (brother) who holds the position of a father (to his younger brothers), then it becomes necessarily affirmed by reason of the rule of 'the loaf and the staff' that the same is an offence if committed by those (younger brothers) that are dependent on him and hold the position of a son (to him). Hence those who maintain that the texts declaring equal distribution in a case of concealment of joint property, intend that there is no offence of theft,—are silenced by this text of Manu, as well as by the following text of Sruti which declares it to be an offence without any distinction, namely,—"If any one dispossesses a sharer of his share, he may molest him; or if he does not molest him, he may molest his son or son's son."—The meaning of this text of Sruti is: 'If any one dispossesses, *i.e.*, deprives 'a sharer, *i.e.*, one entitled to a share, of his share,' that is, anyhow by force or fraud does not give him a share; 'he', *i.e.*, who is dispossessed of his share 'may molest', *i.e.*, injure 'him', *i.e.*, the dispossessor by reason of his offence; if he does not injure him, he may injure his son or grandson. Those, however, who are ignorant of the Sruti may indeed talk irrationally. But we have

[1] Manu, IX., 218. [2] Yájñavalkya, II. 126.
[3] Manu, IX. 213.

already said that even in the case of joint property, there being another's right, the definition of theft is not inapplicable.

Just as (in an instance discussed in the Mímámsá) the adverse argument is set forth thus,—If, when the sacrificial food consisting of green kidney-beans is not procurable, black kidney-beans be used as a substitute by reason of the similarity (of these two kinds of beans in many respects), then the prohibition laid down in the passage: "Black kidney-beans are not fit for sacrifices," does not apply; because they are used under the impression that they contain the constituent elements of the green kidney-beans: but the conclusion arrived at is, that they cannot be used even as a substitute, upon the ground that all that is necessary for the validity of a prohibition, being, that what is prohibited might take place (but for the prohibition), the prohibition (of the use of black kidney-beans for sacrificial purposes), is not unreasonable, since (some of) the constituent elements of black kidney-beans also are unavoidably used, even when green kidney-beans are used, (because the two sorts of beans must have some of their constituent elements common, which make them appear similar), and hence those elements would have been fit for sacrifices.

3. No complaint, however, should be made by the co-sharers before the king, and even if it be made the king shall cause the restoration by gentle means: this, of which the only visible object is the maintenance of good feelings (of the co-heirs towards each other), is declared by Kátyáyana, thus,—"Property misappropriated by a *bandhu* or kinsman shall not be caused to be restored by force."[1] Nor should it be complained that the consumption by a co-heir during coparcenary was over and above his due proportion; and even when there was such consumption, it is not to be taken into account by the king. To this effect the same sage declares,—"The (unequal) consumption of unseparated *bandhus* or kinsmen shall not be removed"[2] (by an adjustment of accounts). The purport is that unequal consumption cannot be prevented, as it is unavoidable.

It is to be observed that while these texts (of Kátyáyana) may in this way be reasonably explained to mean no more than what they plainly signify, it cannot be held that these texts also intend that there is no offence of theft, for then they would have a meaning not expressed: hence in the above cases also, the penance for theft and legal punishment must take place.

CHAPTER VII.

Of Impartible Property.

1. Now, what is not liable to partition, is explained. On this Yogísvara declares,—"Whatever else is, without detriment to the paternal property, acquired by a man himself, or received from a

[1] II. Cole. Dig., 486, CCCLXXVII. [2] II. Cole. Dig., 486, CCCLXXVII.

friend or obtained at nuptials, does not belong to his co-heirs (*dáyádas*); nor shall he, who recovers hereditary property which had been taken away, give it up to his co-heirs; nor what has been gained by learning."[1]

The term 'without detriment to the paternal property' is to be construed with all (the items of property described); for, were it isolated in construction, then the items such as what is received from a friend, although they involve the expense of the paternal property, would not be liable to partition; but this would be opposed to the practice of persons following the precepts of the Vedas, and, with respect to what is gained by learning, to the text of Nárada, namely,—"He who maintains the family of a brother engaged in the pursuit of knowledge, shall take, though he may be ignorant, a share of the wealth gained by that knowledge."[2]

Kátyáyana also confirms this view by the definition he gives of the gains of learning that are impartible, thus,—"Wealth gained through learning acquired from a stranger while receiving a foreign maintenance is termed gains of learning."[3]

Manu also clearly says,—"Whatever a man has acquired through his own exertion without relying on the paternal property, he shall not give it up to his coparceners (*dáyádas*); nor what has been acquired through learning."[4]—'Exertion' signifies service and the like.

A special rule has been laid down by Sankha, with regard to hereditary immoveable property, though recovered without detriment to the paternal estate, as in the text,—"When one parcener alone has by his own exertion recovered land which had been lost before; the others shall get in proportion to their shares, but after setting apart a quarter share for him."[5]—The meaning is: after having allotted to the recoverer a fourth part (of the land) as a price of the recovery, all the co-sharers (including the recoverer) shall equally divide the remaining three parts.

Although this sort of impartibility follows from the very (plain) principle that 'what is acquired by a man belongs to him', (and so no authority of the Sástras is necessary for establishing it); still there is no defect, inasmuch as generally the Institutes on Positive law do, as we have already stated in the introductory chapter, lay down rules which are as well deducible from reason.

2. Other kinds of property not liable to partition are mentioned by Manu, thus,—"Clothes, vehicles, ornaments, prepared food, water, women, religious fund and charitable work yogakshema, as well as a passage are declared to be not liable to partition."[6]

Patram ('vehicle') means, conveyance.

[1] Yàjñavalkya, II. 118 and 119.
[2] Nárada, XIII. 10.
[3] II. Cole. Dig., 444, CCCXLVII.
[4] Manu, IX. 208.
[5] II. Cole. Dig., 464, CCCLIX.
[6] Manu, IX. 219.

'Clothes and the like' (*i.e.*, ornaments) belong to him alone by whom they have been worn: but those that are not worn but are intended for sale, are certainly liable to distribution.

'Prepared food', *i.e.*, cooked food, shall be partaken by all as much as they can, but shall not be weighed and divided.

'Water', *i.e.*, a reservoir of water, such as a well, shall be used by all accordingly as they require.

'Women', *i.e.*, female slaves being unequal (in number to the shares) shall not be divided but shall be employed in work by turns. But women kept in concubinage by the father shall not be divided, though equal in number, by reason of the text of Gautamâ, namely, —"No partition is allowed in the case of concubines."[1]

The term 'religious fund' (*yoga*) means a fund for the performance of religious ceremonies; and 'charitable work' (*kshema*) signifies a reservoir of water, or the like, constructed for public benefit. The impartibility of these two, though raised or made at the charge of the paternal property, are set forth as examples; since, directly or indirectly, a partition of these is not possible, far less when these are hereditary. Accordingly, Laugákshi declares,— "The sages declare that charitable work is a reservoir of water or the like constructed for public good, and that religious fund is property set apart for the performance of religious rites: these two are pronounced impartible: so are the bed and the seat."[2] Some hold, that the term *yoga-kshema* intend those who perform sacrifices and charitable works, as the king's minister (of charitable works), the (family) priest, and the like. Others say that it signifies weapons, cow-tails, shoes and similar things.

'A passage' is a way for ingress and egress to and from a house, garden or the like; this also is impartible.

3. Clothes and the like worn by the father shall be given to the person who partakes of food at his obsequies: as directed by Brihaspati,—"The clothes and ornaments, the bed and similar furniture, appertaining to the father, as well as his vehicle and the like, shall be given, after perfuming them with fragrant drugs and wreaths of flowers, to the person who partakes of the srâddha."[3]

4. Also ornaments that are worn by the females are not partible: thus it is declared,—"The *dáyádas* or co-heirs shall not divide such ornaments as are worn by the females during the life of their husbands: they, who do so, become degraded."[4]—From the term 'worn' it appears that those that are not worn are liable to partition. By the phrase 'during the life of their husbands', it is indicated that whatever is worn in any part of the body as a badge of the husband's life, is not liable to partition.

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[1] Gautama, XXVIII. 47.
[2] Not found.
[3] Brihaspati, XXV. 85.
[4] Manu, IX. 200.

5. Also what has been received from the father as a token of affection, cannot be divided: thus it is declared,—"By favor of the father, clothes and ornaments are used."[1]—"By the term 'are used', their impartibility is indicated.

Likewise, what has been given by the parents (is not divisible) by reason of the text of law,—"Whatever has been given by the parents to any one, becomes exclusively his property."[2]

But it is to be observed that gifts by the parents out of favor or affection should be guided by propriety but not by caprice; for that would be contrary to the practice of the learned.

6. The details of what has been acquired by the use of paternal property are found in many texts of law concerning what is gained by heroism, and the like; but these are not written here for fear of increasing the bulk of the book.

CHAPTER VIII.

EXCLUSION FROM INHERITANCE.

1. Now those that are not entitled to shares on partition (or succession) are described.

On this subject Yogísvara,—"An impotent person, an outcast and his issue, one lame, a madman, an idiot, a blind man, a person afflicted with an incurable disease, as well as others (similarly disqualified) shall not get shares, but shall be maintained."[3]

"His issue" means, the issue of an outcast.

It is to be observed that "an impotent person" and "a blind man," if so from their birth, are certainly not entitled to shares on partition, but if they become so in the interim, are certainly entitled to shares on a partition agreeably to the mode laid down in the text, —"Or his allotment must be made out of the visible estate corrected for income and expenditure,"[4]—provided their cure be effected by medication or the like.

By the term "others" are included those that have adopted an order other than that of the householder, that are inimical to their father, that are addicted to vice (*upapátaki*,) that are deaf or dumb, and that are destitute of an organ of sense (or action). Thus Vasishṭha declares,—"But those who have adopted an order other than that of the householder are not entitled to shares."[5] So also Nárada says,—"An enemy to his father, an outcast, an impotent person, and one who is addicted to vice take no share (of the

[1] II. Cole. Dig., 259, XCV.
[2] Yájñavalkya, II. 123.
[3] Yájñavalkaya, II. 140.
[4] *Ibid*, II. 122.
[5] Vasishṭha, XVII. 52.

inheritance), though they be aurasa or real sons, much less if they be sons of the wife."[1] Also Manu says,—"An impotent person and an outcast are excluded from a share of the heritage; and so are persons deaf and blind from birth as well as madmen, idiots, the dumb and whoever are destitute of an organ (of sense or action):"[2] *Nirindriya* or "destitute of an organ" is one who has lost an organ of sense by disease; hence an impotent person does not come under it. But some say that "destitute of an organ" means those that are devoid of hands, feet or the like (organ of action).

2. The impotent and the others do not obtain any share but "shall be maintained" (§ 1, Yogísvara's text), *i.e.*, supported by giving food, raiment or by the like. But if they be not maintained, a grave offence is committed; so Manu declares,—"To all of them food and raiment ought to be given by a wise man; he who does not give, becomes deeply degraded."[3]—"Deeply" means for life.

3. Amongst them, however, an outcast (patita) and one addicted to vice (upa-pátaki) are excluded from inheritance, if they do not perform the penance. But of one who does not, out of perverseness, perform the penance, the exclusion is certain.

4. The exclusion, again, of these, takes place, if their disqualification occur previously to partition (or succession;) but not also if subsequently to partition (or succession;) for there is no authority for the resumption of allotted shares.

The venerable Vijñánesvara says that if subsequently (to partition or succession) their defects are cured by medication or the like, they become entitled to obtain their shares. And this is reasonable; because it is by reason of the defects that they were disqualified to share; and because the same principle is applicable (to such a case) as is laid down in the text,—"One who is begotten by one of equal class, after the coparceners have been separated, is taker of the share."[4]

5. The (masculine) gender in the words 'an outcast', &c., is not intended to be expressive (of restriction,) for it cannot reasonably be accepted (in that sense); in the same way as in the text,—"A Bráhmin (in the masculine gender) shall not drink spirituous liquors."[5] Hence, so far as is applicable, this (law of exclusion based upon defects) excludes the wife, the daughters or the like (female heirs) as well.

6. Though the impotent and the rest are excluded from inheritance, still their sons are entitled to the shares (which would have been allotted to them). This is declared by Yogísvara,—"But of these, the aurasa or true son and the kshetraja or son of the wife, if free from defect, take the shares."[6]—"Free from

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[1] Nárada, XIII. 21.
[2] Manu, IX. 201.
[3] *Ibid*, IX. 202.
[4] Yájñavalkya, II. 122.
[5] Anonymous.
[6] Yájñavalkya, II. 141.

defect" means, having no defect such as is mentioned above which causes the exclusion from inheritance. Among those (that are excluded from inheritance,) an impotent person may have a kshetraja or son of the wife; the rest, aurasa or a real son as well. The mention of these two kinds of sons is intended to exclude the other descriptions of sons.

7. An outcast and his son are not entitled to maintenance. Accordingly, Devala says,—"When the father is dead, an impotent person, a leper, a madman, an idiot, a blind man, an outcast, the offspring of an outcast and a person wearing the token (of religious mendicancy) do not obtain a share of the heritage. Food and raiment should be given to them excepting the outcast: but the sons of such persons being free from similar defects, shall obtain their father's share of the inheritance."[1]—'A person wearing the token' means one who has become a religious wanderer or the like. Here (*i.e.*, in the second verse) the term 'outcast' includes also the son of an outcast, for being begotten by an outcast he too becomes an outcast; by reason of the text of law, namely,—"The issue of an outcast becomes certainly outcast excepting a female, for she goes to another (family)."[2] The term 'dead' indicates (only) the time for partition, because they are not entitled even if partition be made during the lifetime of the father.

8. Also Kátyáyana says,—"The son of a woman married in an irregular order, and he who is begotten by a kinsman of the same family are unworthy of inheritance; and so is an apostate from a religious order."[3] If a woman of a superior caste be espoused after marrying one of an inferior caste, then both of them are married in irregular order. A kshetraja or son of the wife, procreated by a kinsman of the same family without being authorized to raise up issue, is unworthy of inheritance.

"But the son of a woman married in irregular order, may be heir, provided he belong to the same class with his father; and so may the son of a man belonging to a different (but superior) caste, but begotten by a woman espoused in the regular order. The son of a woman married by a man of inferior caste does not take the (*riktha* or unobstructed) heritage. But bare food and raiment only should be given by his *bandhus*. But in default of the *bandhus* he may take his paternal property. The *bándhávás* (being step-brothers?) shall not be compelled to give up (to him a share of) that property received (by them, and) belonging to (their or his?) own father."[4]

9. It is declared by Manu that an impotent person and the rest may espouse wives and have sons, thus,—"If an impotent person and the rest should at any time desire to marry, the offspring of such as have issue shall be capable of inheriting."[5] *Tantu* (rendered into 'issue') means offspring.

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[1] II. Cole. Dig., 426, CCCXXI.
[2] Not found.
[3] II. Cole. Dig., 439, CCCXXXVII.
[4] Do.
[5] Manu, IX. 203.

It cannot be argued, how can an impotent person and the rest contract marriages, since they are degraded for want of investiture with the sacred thread? Because, for want of investiture owing to unfitness for investiture, a person is not degraded any more than a Súdrá.

10. Their daughters must be maintained till their marriage, and must be married. Their wives, however, that are childless and chaste must be maintained, provided they are not perverse; if otherwise, shall be expelled. This is declared by Yogísvara,—"Their daughters also must be maintained until provided with husbands. Their childless wives, conducting themselves aright, must be supported: but such as are unchaste should be expelled; and so indeed should those that are perverse."[1]

11. Ápastamba ordains,—"Of an excommunicated person, the inheritance, oblations of food and libations of water cease."[2]—'An excommunicated person' is one in whose company water is not drunk (by his caste men). Likewise Brihaspati says,—"Though born of a woman of equal class, a son destitute of virtue is unworthy of the paternal wealth: it is declared to belong to such kinsmen offering funeral oblations to him as are versed in the Vedas. A son redeems his father from debt to superior and inferior beings: hence there is no use for one who acts otherwise. What can be done with a cow which neither gives milk nor bears calves? For what purpose was that son born who is neither learned nor virtuous? A son who is ignorant of the Sastras and devoid of courage and good purposes, who is destitute of the practice of devotion, and who is wanting in good conduct, is similar to urine and excrement."[3]

The meaning is this: A son who performs the obsequies of his father and other ancestors, is of approved excellence, though he be uninitiated; not a son who acts otherwise, be he the eldest and conversant with the whole Veda.

The purport is, that the very ownership of the paternal property forms the remuneration of one who performs the duties of a son: wherefore should one that neglects them have a right to that remuneration? To this effect is the text of law, namely,—"Since a son delivers his father from the hell called *put*, therefore he is named *put-tra* by the Self-existent Himself."[4]

Also Manu says,—"All the brothers who are addicted to vice lose their title to inheritance."[5]—The purport is that those who are incapable of performing the rites enjoined by the Sruti, as well as those that are addicted to vice, are not entitled to get shares.

Thus (are described) those that are not entitled to shares on partition (or succession).

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[1] Yájñavalkya, II. 142.
[2] Not found.
[3] Brihaspati, XXV. 42—45.
[4] Manu, IX. 138.
[5] Manu, IX. 214.

CHAPTER IX.

RIGHTS OF SEPARATED CO-SHARERS.

1. Now the rights of separated kinsmen (are considered). On that subject Nárada says,—"When there are many sprung from one man, whose duties are separate, whose transactions are separate, and whose instruments of (household) work are separate; if they be not accordant in affairs, should they give or sell their own shares, they may do all that as they please; for they are masters of their own wealth."[1]

The meaning of this is: "Many sprung from one man", *i.e.*, many brothers,—some say that the term "being separated" is understood, but in our opinion, the terms "whose duties are separate," &c., signify that they are separated, for it does not appear that these terms form the predicate, (and the construction of the text is not that "many sprung from one man, shall have separate duties, &c.",) since such an injunction would be useless;—"whose duties" such as the worship of gods, ancestors and the twice-born, "are separate", *i.e.*, apart from those of the other co-sharers;—it does not mean that duties consisting in the preservation of the sacred fire, &c., are separate, for although the performance of these duties depend upon wealth, still they are separate even in a joint family; accordingly, Brihaspati says, "The worship of gods, ancestors, and the twice-born is joint among those who live in commensality: but the same takes place in every house of the separated kinsmen;"[2] and this (text) has been already considered (by us;)—"whose transactions", *i.e.*, agriculture and similar temporal business, "are separate; if they be not accordant in affairs", *i.e.*, if they do not give permission to each other, still "should they give or sell their own shares, they may do, as they give or sell their own shares, they may do, as they please, all that", also any other transaction such as mortgaging, borrowing or lending.

If the separated co-sharers accord their assent, then only the determination of any dispute becomes facilitated; but if they do not, then gift, &c., do not become invalid. The reason for this is, "for they are masters of their own wealth", *i.e.*, of the property which has become the subject of their exclusive right. The purport being, that mutual assent is requisite when the property is common, but not also when it is separate.

2. As for what has been ordained by Brihaspati, namely,—"Separated kinsmen, as those that are unseparated, are equal in respect of immoveable property; for one has not power over the whole to give, mortgage or sell it:"[3]—that also is to be taken to lay down that the permission of the separated kinsmen is desirable

[1] Nárada, XIII. 42, 43. [2] Brihaspati, XXV. 6.
[3] Brihaspati, XXV. 93.

simply for the purpose of the facility of determining any dispute, in the same way as the permission of the headman of the village. For in the case of immoveable property, the determination in the case of immoveable property, the determination in a different time, of the question whether the family was separated or joint, may become difficult if in the long interval the attesting witness and the like cease to exist. But should the permission be granted, then any dispute (regarding the disposition of property) may be decided, without determining the question as to partition. This is the opinion of Vijñánesvara and many others. But the author of the Smritichandriká says :—If the co-sharers though separated consider the partition of immoveable property to be inconvenient, and so divide the other kinds of property and take their shares separately, but keep the immoveable property joint, with the stipulation that 'we shall enjoy its profits by dividing the same at the time of realization' : this text (of Brihaspati) refers to such immoveable property.

This (assertion of the author of the Smritichandriká) is merely an assumption; for in that case permission is necessary by reason of the very fact of the property being joint.

3. The same sage declares,—"Whatever share has been allotted to any one, he shall not complain after receiving the same."[1]—'Receiving' means, accepting. Any one who gives his assent at the time of partition and afterwards disputes, shall be restrained by the king, and punished should he persist. This is declared by the same sage, thus,—"If any one who has received an allotment by his own choice, disputes again; he shall be confined to his own share, by the king, and shall be punished if he perseveres."[2]—'Perseveres' means persists.

CHAPTER X.

Ascertainment of a Contested Partition.

1. The mode of partition having been described, now is stated the mode of determining a doubt regarding the fact of a partition having been made.

On that subject Yájñavalkya says,—"It is to be known that in case of concealment of partition, the ascertainment of the fact of partition may be made by the evidence of kinsmen *jnátis*, relations and witnesses, and by documentary evidence, as well as by disconnected houses and fields."[3]

(The meaning is :) "It is to be known that in case of concealment", *i.e.*, denial, "of partition", made by any one of the separated

[1] Brihaspati, XXV. 94. [2] Brihaspati, XXV. 95.
[3] Yàjñavalkya, II. 149.

co-sharers, "the ascertainment", *i.e.*, the determination "of the fact of partition may be made by the evidence of kinsmen", *i.e.*, the father's relations, "relations", *i.e.*, the maternal uncle and the like,—"and witnesses", *i.e.*, strangers falling under the definition of a witness: although kinsmen and relations also come under the category of witnesses, still by the rule of 'the bulls and the beaves' they are separately mentioned, since they being nearer than outside witnesses, are aware of fact that are incidents of partition, such as separate performance of the sráddha and the like (rites,) and are appointed arbitrators to carry out a partition: and "by documentary evidence", *i.e.*, the instrument of partition: "as well as by disconnected (yautaka)", *i.e.*, separated by metes and bounds,—agreeably to the root *yu* which means 'to unite' or 'to disunite'—houses and fields".

Nárada says,—"If a question arise among co-heirs in regard to the fact of partition, it must be ascertained by the evidence of agnatic relations, by the deed of partition or by the separate transaction of affairs."[1]—The term 'agnatic relations' is used in order to show that if such (witnesses) be forthcoming, other persons should not be preferred as witnesses: 'affairs', such as agriculture and the like.

Sankha declares,—"Should a doubt arise on the subject of partition of the wealth of kinsmen, the family may give evidence, if the matter be not known to the agnatic relations."[2] 'Family' means the cognates, such as the maternal uncle; hence it is, that the agnatic relations are prominently set forth by Nárada. The reading, *jnátribhih* or 'if the eye-witnesses be not known' (instead of 'if the matter be not known to agnatic relations') is not genuine, since it is not found in old manuscripts nor in the commentaries.

The documentary evidence is of greater weight than the testimony of witnesses. This has been dealt with (by us) in the Paribháshá (or that part of this commentary, where the adjective law has been treated).

2. Nárada ordains,—"Gift and acceptance of gift, cattle, food, house, land and attendants, must be considered as distinct among separated brothers, as also cooking, religious ceremony, income and expenditure. Separated, and not unseparated kinsmen, may reciprocally bear testimony, become sureties, bestow gifts and accept presents. Those by whom such matters are publicly transacted with their co-heirs, are to be known separate even without written evidence."[3]—'Religious ceremony' means, the worship of gods and the like, by reason of the text cited before (ch. IX, § 1, para. 2,) namely,—"The worship of gods, &c.,"—and by reason of the text of Nárada, namely—"Of undivided brothers, the religious duties are common; after partition, the religious duties also of each of them become separate."[4]

[1] Nárada, XIII. 36.
[2] II. Cole. Dig., 496, CCCLXXXVI.
[3] Nárada, XIII. 38—40.
[4] *Ibid*, XIII. 37.

Brihaspati says,—"A violent crime, a pledge of immoveable property, and a previous partition among co-sharers may be ascertained by presumptive proof, (if) there are neither writing nor witnesses."[1]—The particle 'if' is understood.—"They who have their income, expenditure and wealth distinct, and have mutual transaction of money-lending and traffic, separate. 'Money-lending' is the investment of money for interest; 'traffic' is trade; 'mutual transaction' means, when one brother is creditor and another is debtor, one sells and another buys from him: from these and similar facts which cannot be accounted for except by separation, partition is to be inferred.

From the plural number in "such matters" it is not to be supposed that the inference arises only when all these jointly exist; because the intention is, that the inference arises from all or some of them, and because the text is (not arbitrary but) based upon reason.

3. Where the fact of partition cannot be ascertained by circumstantial evidence, it is to be determined by ordeal or oaths, according as the estate is small or large. It has been set forth in the introductory chapter, that "When, the circumstances also fail, it is to be determined by oaths".

4. When, however, no oral evidence is forthcoming, the circumstances are meagre, and neither party wishes to have recourse to ordeals and oaths; in such a case, Manu says that partition is to be made again, thus,—"When a doubt arises as to the mutual separation of the co-heirs, then re-distribution is to be made by them although residing in different places."[2]

It is to be observed that this is to be done in the same way as in the partition by the reunited co-heirs, after liquidating the debts of all.

As for what Manu says, namely, "Only once may the distribution of shares take place, only once may a maiden be given (in marriage), only once may the same article be gifted (by an owner): these three may occur but once:"[3]—this applies in the absence of any reason for repetition. The same is true also in the gift of a daughter in marriage, as well as in any other gift.

Thus is finished the determination of the fact of partition in a case of doubt.

And thus is finished the topic of litigation called Partition of Heritage.

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[1] Brihaspati, XXV. 90.

[2] Not found.

[3] Manu, IX. 47.

DÁYATATTVA

BY

RAGHUNANDANA.

CHAPTER I.

Law of Heritage.

1. *Om* salutation be to Ganesa. Having prostrated himself before Vásudeva, the Lord of the universe, eternal, whose essence consists of omniscience and beatitude, the fortunate Raghunandana discusses the principles of the Law of Heritage.

2. In this treatise are briefly expounded the determination (of the meaning) of Partition of Heritage; also the distribution effected by the father; likewise partition by brothers; exclusion from shares; partibility and impartibility; the method of removing doubts regarding the fact of partition having been made; the distribution of what is concealed; woman's property and the right of succession thereto; and the heirs to the property of a sonless man.

3. First (the meaning of the term) Partition of Heritage (is discussed).

4. On that subject Nárada says:—"Where the division of the paternal property is instituted by sons, that topic of litigation is, by the wise, called Partition of Heritage."[1] "Property" means wealth; "paternal" signifies acquired through the relation of paternity; "where" relates to "the topic of litigation".

5. The term "Heritage", by derivation, signifies what is given. Here the use of the verb (*dá*) is secondary; since there is a similarity (of the secondary with the primary meaning of the term) in the consequence, namely, that of constituting another's right of property after annulling the previous right of a person who is dead or gone to retirement or the like. But there is no abdication on the part of the deceased, and the like, in the form of an intention, such as, "This property is no longer mine," which has the effect of putting an end to one's right of property.

6. Likewise, from the use of the term "Heritage" to signify one's property, is inferred the cessation of the right of the previous owner. And to that property accrues others' right, dependent on

[1] Nárada, XIII. 1.

relation to the former owner, by reason of the text of Baudháyana, which says: "When there are sons at the time of the cessation of the father's right, the property which was the subject of that right descends to the sons."[1]

7. As for the text of Gautama, however, cited in the Mitákshará, namely: "Property is taken by reason of ownership through birth alone. This is said by the sages;"[2] that also is to be construed in the following way:—inasmuch as it is through the relation of mere birth,—which is the cause of sonship, which is stronger than any other relation,—that the son's right to the property of the father accrued at the time of the cessation of the father, the son and not any other relative, should take that property. This is intended by the sages.

8. Nor can it be argued that even while the father's right continues, the son's right accrues, at the time of his birth, to the property of the father: for this meaning would be inconsistent with the text of Devala, which says: "When the father is dead let the sons divide the father's wealth; for sons have no ownership while the father is alive and free from defect."[3] "Free from defect" signifies 'not degraded'.

9. Accordingly, Nárada, in the commencement of (the chapter on) Partition, says: "If the father be lost, or no longer a householder, or his temporal affections be extinct."[4] "Lost" means degraded; "no longer a householder" signifies, having quitted the order of a householder.

10. Therefore the son's right to the father's estate accrues when the father's right of property is destroyed by death, degradation or adoption of an order other than that of the householder; and when his temporal affections are extinct, that is, even though the right of property remain, if the father be devoid of wish for the wealth belonging to him.

11. Here destruction of the right of property by reason of degradation is to be understood (to take place) on disinclination to expiation, because the capacity for atonement, which can be performed with one's own wealth only, is predicated in the Srutis, even of the degraded.

12. By the extinction of desires is meant the cessation of desires which is not identical with that absence of desires, which may co-exist with the right of property.

13. Here it should be remarked that the right of property, being once extinguished by reason of the cessation of desires, will not again revive with the revival of desires.

14. Hence, because in the text of Devala (§ 8) it is affirmed

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[1] Baudháyana, 1, 5, 11. 11.
[2] Not found.
[3] II. Colc. Dig., 196, V.
[4] Nárada, XIII. 3.

that the son's right to the father's property does not arise while the father is alive, therefore the text of Gautama, which says that "property is taken by reason of ownership through birth alone. This is said by the sages", is to be interpreted thus:—because immediately after the extinction of the father's right, the son's right is generated through birth, consequently by reason of ownership the son takes the property of his father, not however immediately after birth, while the father's right remains.

15. In the text of Nárada, which is first quoted (§ 4), the terms 'father' and 'sons' indicate any relatives. Accordingly, Yájñavalkya, having premised Partition of Heritage, says:—"The wife and the daughters, also both parents, brothers likewise and their sons, gentiles, cognates and a pupil and fellow-student: on failure of the first (among these), the next in order is heir to the estate of one who departed for heaven leaving no male issue. This rule extends to all classes."[1] From what follows, it appears that the phrase "among these" is understood after the term "first".

16. Consequently the term "heritage" is used to signify wealth in which right of property of the owner's kindred, dependent on relation of sonship, &c., to the owner, arise on cessation of his right.

17. The phrase,—"Dependent on relation of sonship, &c.," is inserted (in the above definition) to distinguish that right which is dependent on purchase. The phrase "on cessation of his right" excludes the wife's right to her husband's property, contemporaneous with the husband's right.

18. Some* allege that partition which takes place by reason of the co-existence of other relatives (who have an equal right of succession) is a particular ascertainment of the right of property, or making of it known, which has arisen in lands, gold, &c., and which extends to a part only, but which is unfit for special use and appropriation because grounds of discrimination are wanting, by casting of lots or otherwise which determine that a particular chattel belongs to a particular person.

19. But this (definition) is not accurate. For how may it be certainly known, since no text declares it, that the lot for each person falls precisely on that article which was already his.

20. Again, if wealth be gained after the father's death, by a brother riding one of two horses, which belonged to the father, it is universally acknowledged, that two shares of it appertain to the acquirer; and one to any other co-heir. In such a case when the original property is subsequently divided, if that very horse be obtained by the acquirer, then according to the opinion of those who affirm partial rights, the horse was already his; why, then, should

* The allegation is made by the author of the Dáyabhága.

[1] Yájñavalkya, II. 135 and 136.

another brother share the wealth gained by him? But if the horse be obtained by another, equal participation of wealth so acquired would be proper, since it is gained by the personal labour of the one and by the work of a horse belonging to the other.

21. But in fact, partition is the adjustment by lot or otherwise into a right over a specific portion, of that right which did, by reason of the same relation of the co-heirs, accrue to the whole property, upon the extinction of the right of the previous owner.

22. Thus, even the accrual and extinction of rights over the entire estate are to be admitted, in the same manner, as in the case of the reunion of co-heirs, the destruction of rights over portions, and the production of rights over the entire estate, are acknowledged.

23. This too is (in a manner) acknowledged by the author of the Dáyabhága who himself writes:—In the following text of Brihaspati, namely: "He who being (once) separated dwells again through affection, with his father, brother or paternal uncle is termed reunited,"[1] because the father, the brother, the paternal uncle and the like, are from their birth likely to be united as regards the property acquired by the father or the grandfather; they alone may become reunited, when being once separated they annul, through mutual affection, the previous partition with the agreement to this effect, that the wealth which is thine is mine, and what is mine is thine, and remain like one householder in any transaction. But not an association of merchants who, unlike the coparceners, are by the mere union of stocks formed into a partnership, nor the mere union of estate of separated coparceners without the stipulation based upon affection (are to be looked upon as instances of reunion).

24. By reason of the right being common, the text of Kátyáyana, which says: "A coparcener is not liable for the use of any article which belongs to all the undivided relatives,"[2] becomes consistent in its literal sense; inasmuch as his own right extends over every article; accordingly, there can be no theft in such a case, as will be shewn hereafter. (Chap. VIII.)

25. Similarly also, by the text of Nárada, namely: "Separated, not unseparated, brothers may reciprocally bear testimony, become sureties, bestow gifts and accept presents,"[3] the prohibition of mutual gift, &c., amongst undivided coparceners becomes logically consistent: because (in such a case) there is an impossibility of gift and acceptance, inasmuch as the acceptor had a right to the property given, even before a gift of it was made.

26. All the coparceners are entitled to the fruits of all acts, either temporal or spiritual, which are performed with the use of the joint property; since their right is common. This is affirmed also

[1] Brihaspati, XXV. 72.
[2] II. Cole. Díg., 486, CCCLXXVII.
[3] Nárada, XIII. 39.

by Nárada: "Among undivided brothers, duties continue common; but when partition takes place, their duties also become different."[1]

27. Vyása ordains: "Let no one without the consent of the others, make a sale or gift of the whole immoveable estate nor of what is common to the family."[2] Here, from the use of the adjective "whole", it appears that the right of each parcener accrues to the entire estate.

28. Therefore, when there are two persons equally related to the deceased, each of them considers the property left by the deceased to belong to himself as well as to the other co-heir. Gift and the like by the one for his own purpose, is prohibited, should the other's consent be wanting.

29. Therefore it is established that the right does not accrue to a fractional portion.

30. Brihaspati lays down a special rule with regard to the allotment of shares:—"All the sons take equal shares of the property of their father; but of these he who is learned and virtuous deserves a larger share; since a person becomes father by that son who has in the world acquired a fame in literature, science, heroism, acquisition of wealth, knowledge of theology, charity and commerce."[3]

31. Brihaspati also speaks of partition by use at successive periods:—"A single female slave should be employed on labour in the house (of the several co-heirs) successively according to the number of shares."[4]

32. Here there is clearly the supposition either of the production and destruction of different temporary rights of a single person over a single individual; or of the temporary cessation of different rights of all.

33. A text of Kátyáyana cited in Kalpataru and Ratnákara declares that (the law of) partition may be different in different places and the like:—"Partition of Heritage is to be regulated by the law which may obtain in a country, in a class, in an association and in a village. Bhrigu (has ordained this.)"[5] "Has ordained this" is understood.

CHAPTER II.

PARTITION MADE BY THE FATHER.

1. In the next place (is discussed) the distribution made by the father. (On this subject) Hárita (says): "A father during his life may, after distributing his property, retire to the forest, or

[1] Nárada, XIII. 37.
[2] I. Cole. Dig., 303, VI.
[3] Brihaspati, XXV. 8 and 9.
[4] *Ibid*, XXV. 82.
[5] II. Cole. Dig., 471, CCCLXV.

enter into the order suitable to an aged man; or he may remain at home, having distributed small allotments and keeping a greater portion: should he become indigent, he may take back from them."[1] "The order suitable to an aged man", intends, retirement.

2. By this text, the father is authorized to distribute a small part, and to reserve the greatest portion of the wealth.

3. Vishṇu (ordains): "When a father separates his sons from himself, his own will regulates the distribution: but in the estate inherited from the grandfather the ownership of the father and the son is equal."[2]

4. As regards even his self-acquired property, the unequal distribution by his own will should be guided by such reasons as the existence or absence, of filial piety, of large family, of inability, and the like, (of any son). This is affirmed by Kátyáyana: "But let not a father distinguish one son at a partition made in his lifetime, nor capriciously exclude one from participation without sufficient cause."[3]

5. But when there are none of the reasons enumerated above (a father may not make an unequal distribution). This is declared by Nárada: "A father who is afflicted with disease or influenced by wrath, or whose mind is engrossed by a beloved object or who acts otherwise than the Sastras permit, has no power in the distribution of the estate."[4] "Beloved object", intends, the son of a wife on whom he dotes, and the like.

6. But should the sons themselves request partition, in that case, Manu declares the absence of unequal allotment: "If the undivided brothers do, with one accord, desire partition, then the father shall, on no account, make an unequal distribution."[5]

7. The father, if unwilling, shall not share with his sons his paternal property, which was seized by strangers but which he recovered. This is ordained by Manu and Vishṇu: "If the father recovers paternal wealth (seized by strangers and) not recovered (by other sharers nor by his own father) he shall not, unless willing, share the same with his sons,—it was acquired by himself."[6] The construction is, that he shall not share it with his sons, because it was, as it were, acquired by himself.

8. But as regards the case of recovery by any other (than the father), the law is propounded by the text of Sankha which is hereafter cited (§ 11). This follows from the logical interpretation of two provisions, one of which is general and the other special.

9. This, however, refers to immoveable property.

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[1] II. Cole. Dig., 205, XXIII.
[2] Vishṇu, XVII. 1.
[3] II. Cole. Dig., 207, XXVII.
[4] Nárada, XIII. 16.
[5] Not found.
[6] *Ibid*, IX. 209.

10. But in gems and the like, though not recovered by him, the father alone has ownership: as Yájñavalkya intimates: "The father is master of all the gems, pearls and corals without exception: but neither the father nor the grandfather is so, of the whole immoveable property."[1] Since the grandfather is here mentioned, the text must relate to his wealth.

11. In like manner, the following text of Sankha refers to a case of recovery by brothers and the like: "When one parcener alone, by his exertion, recovers land which was lost before, the others take in proportion to their shares, after setting apart a fourth for him."[2]

12. Here the recoverer should, after appropriating a fourth share for himself, take an equal share of the remainder with his brothers: otherwise the shares might become inequitable.

13. When the father effects the distribution, he should allot to his sonless wife a share equal to that of a son. Because Vyása declares: "But the father's wives, who are without male issue, are declared to be entitled to equal shares with his sons; and all the grandmothers are declared to be equal to mothers."[3]

14. This rule applies when stridhana has not been bestowed. This is affirmed by Yájñavalkya: "When the father (by his own choice) makes all his sons partakers of equal shares, his wives, to whom stridhana has not been given by their husband or father-in-law, must be made participants of shares equal to those of sons."[4]

15. In order to bear out the consistency of the texts of Vyása and Yájñavalkya, the phrase "father's wives" in the text of the former (§ 13) is to be construed, "when the father distributes his property, his wives."

16. Nor can it be said that the converse is the case here; because the logical rule of interpretation is, that "when a provision of law is clear in itself, it should not be controlled by any other."

17. Therefore in a case of partition made by the sons, the step-mothers (without male issue) are not entitled to any shares.

18. When stridhana has been given, the husband should allot to his wife half the share of a son. This appears to be the law (from the combined effect of the following texts of Yájñavalkya and Baudháyana); for Yájñavalkya observes in a case of marriage: "To a woman, whose husband marries a second time, let him give her an equal sum (as a compensation) for the supersession, provided no separate property have been bestowed on her: but if any have been assigned, let him allot half (the share of a son);"[5] and Baudháyana says: "What is affirmed of even one among many

[1] I. Cole. Dig., 411, XI.
[2] II. do. 464, CCCLIX.
[3] II. Cole. Dig., 243, LXXXII.
[4] Yájñavalkya, II. 115.
[5] Yájñavalkya, II. 148.

who have a common property, the same is to be extended to every one, since they are considered similar."[1]

19. When partition is made, by the grandsons, of the property of their grandfather, a share ought to be allotted to the grandmother, in the same manner as a share is given to the mother (when paternal property is divided).

20. Vishṇu says: "But in the property left by the grandfather, the father and the son have equal ownership."[2] Also Yájñavalkya ordains: "The ownership of the father and the son is the same in land or in a corrody or in chattels which were acquired by the grandfather."[3] The author of the Kalpataru defines 'a corrody' to be, what is granted by the king and the like, receivable periodically from a mine or similar fund: 'chattels' from their association (with land) here means biped (*i.e.*, slave); because another text affirms: "Although immoveables and bipeds have been acquired by a man himself, a gift or sale of them should not be made by him without the consent of all the sons."[4]

21. According to these texts, in regard to the land or a corrody or slaves acquired by the grandfather, as the father has right over these by reason of his being the person who presents oblations at solemn obsequies, so if his right cease by death or other cause, his sons have a right, notwithstanding their uncle, to so much as should have been their father's share.

22. For the same reason the text of Kátyáyana quoted in the Ratnákara declares: "If an unseparated son dies, his son should be made participant of his father's share; he who has not received maintenance from the grandfather is entitled to get his father's share from his uncle or uncle's son."[5]

23. During the lifetime of the father, the grandsons are not entitled to any share, inasmuch as they are then incapable of presenting funeral oblations to the grandfather.

24. Similarly, on the extinction of the right of the proprietor's grandson, his great-grandsons become participators of his (the grandson's) share only. But they get no share during the grandson's lifetime.

25. Or the above text may admit of the following interpretation, namely, that as the father is at full liberty to allot unequal shares when he is distributing his self-acquired property: the same is not the case here (*i.e.*, when distributing his paternal estate).

26. But these texts do not intend equal ownership of the father and the son. Because two shares of the father are declared by the following text of Nárada: "Let the father making a partition

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[1] Not found.
[2] Vishṇu, XVII. 2.
[3] Yájñavalkya, II. 121.
[4] I. Cole. Dig., 411, XIV.
[5] II. Cole. Dig., 241, LXXIX.

reserve two shares for himself: when her husband is dead, the mother is entitled to an equal share with her sons."[1]

27. Nor can this refer to the self-acquired property of the father; because as to that the unlimited discretion of the father declared by Vishnu in the text, "His will regulates the division of his self-acquired property,"[2] ought not to be restricted to two shares; also because it would be contradictory to the text of Hárita which ordains; "He may remain at home keeping the greater portion to himself."[3]

28. But the text of Nárada (§ 26) refers to the property of the grandfather and the other ancestors.

29. Also the following text, cited in the Mitákshará, refers to the property left by the grandfather: "By favour of the father apparels and ornaments are used: but immoveable property may not be consumed (even) with the father's indulgence:"[4] because the self-acquired immoveable property, granted by the father, may, of course, be consumed (by the sons); otherwise an objection would arise in the shape of an inference of a different radical revelation.*

30. Brihaspati declares that the distribution of an estate left by the grandfather or other ancestor takes place only when the mother is past child-bearing: "On the death of both parents, participation among brothers is allowed; and even while they are both living, it is right, if the mother be past child-bearing."[5] Here the

* The meaning is this. The text, *viz.*, "But immoveable property may not be consumed even with the father's indulgence" refers to the grandfather's property, and not to the self-acquired property of the father. For the father's unlimited authority over his self-acquired property is declared by innumerable texts. Consequently there is no reason why the son might not consume the father's self-acquired property even with his indulgence. If it be argued that this text itself intends to put a restriction to the unlimited power of the father upon his self-acquired property, in that case an objection would arise, in the shape of an inference of an opposite revelation. This objection cannot be comprehended unless the following doctrine of Hindu revelation be taken into consideration. The Hindus believe that their law is based upon revelations which were not recorded by the sages who were inspired therewith. But they handed down these to their disciples who traditionally remembered the purport, but not the letter of these revelations. The sense of these revelations was, by the remembering sages expressed in their own language which was recorded. Hence Hindu law bears the designation of Smriti which signifies "what is remembered". Therefore the subsequent Hindu writers classify their revelations under two heads, namely, the direct and the inferential. By the direct are included the three Vedas consisting of the Mantra and the Bráhmana, and the Upanishads. Under the inferential are comprised those that are deduced from Smriti or the texts of Hindu law, and from the customs and usages which are observed from time immemorial, by the learned world, but which are not expressly prohibited.

Now, if the argument that a restriction was intended by the above text to be placed upon the unlimited authority of the father over his self-acquired property be correct, then a revelation is to be inferred to the following effect; that a person has not unlimited authority over his self-acquired estate. But from the texts, which lay down that a person has an absolute right of disposal as to his self-acquired property a contradictory revelation necessarily follows. This would be absurd. Therefore the interpretation put by the Author upon the above text is perfectly consistent.—TRANSLATOR.

[1] Nárada, XIII. 12.
[2] Vishnu, XVII. 1.
[3] II. Cole. Dig., 205, XXIII.
[4] *Ibid*, 259, XCV.
[5] Brihaspati, XXV. 1.

term 'mother' includes also a step-mother; because of the parity of reason, namely, the probability of the birth of other sons.

31. Because it is affirmed that "if the mother be past child-bearing", therefore the text refers to the property left by the grandfather, but not to the estate of the father; for as to this, provision is made for the share of one who is born after partition. As Brihaspati declares: "The younger brothers of these, who have made a partition with their father, whether children of the same mother or of her rivals, shall take their father's share. A son born before partition has no claim on the paternal wealth; nor one begotten after it, on that of his brother. As in the the property, so in the debts likewise and in the gifts, pledges and purchases, they have no claim on each other, except for acts of mourning and libations of water."[1] "Begotten after partition", signifies, "one that is conceived after partition".

32. Yájñavalkya says: "When the father makes a partition, let him separate his sons (from himself) at his pleasure: and either (dismiss) the eldest son with the best share or (if he choose) all may be equal sharers."[2] In this text, the phrase "at his pleasure", refers to self-acquired property: "with the best share", means a share joined to the twentieth part set apart for the eldest; the best and equal shares refer to the grandfather's estate; for thus it would be consistent with the proposition which is first laid down.

33. Likewise the following text of Gautama refers to the estate of the grandfather; because it says "if the mother be past child-bearing": "After the death of the father, let the son share his estate: or when he is alive, if the mother be past child-bearing and he desire partition."[3]

34. Therefore also, because the death of the father is indicated by the phrase 'after the father', and because the desire of the father alone is expressed by the passage "while he is alive if he desired partition": consequently, it is established that the distribution of the grandfather's estate may take place at the desire of the father and not at that of the sons.

35. Likewise, the text of Devala which says: "They have no ownership while the father is alive and free from defect,"[4] and the text of Baudháyana which declares: "Partition takes place by permission of the father,"[5] are without distinction applicable as well to the father's property as to the estate left by the grandfather.

36. Should, however, the estate of the grandfather be accidentally distributed even before the mother is past child-bearing, (to meet that contingency) Vishṇu says: "Those to whom the father has allotted shares, should allow a share to one who is

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[1] Brihaspati, XXV. 17—20.
[2] Yájñavalkya, II. 114.
[3] Gautama, XXVIII. 1 and 2.
[4] II. Cole. Dig., 196, V.
[5] Baudháyana, II. 2, 3 and 8.

begotten after partition."[1] This text does not refer to the property of the father, because in that case it would be inconsistent with the text of Brihaspati cited before (§ 31).

37. Referring to the twelve kinds of sons, Devala says: "All these sons of one destitute of natural issue are held to be entitled to the inheritance: but should a true legitimate son be afterwards born, they have no right of primogeniture. Such among them as are of equal class (with the father) shall have a third part as their allotment: but those of a lower class must live dependent on him, supplied with food and raiment."[2] "Entitled to the inheritance" means entitled to a full share. Of these, other than the natural sons, those that are of the same class with the father are entitled to a one-third share when there is a natural son.

38. As to this again, Manu lays down a particular rule: "The legitimate son and the son of a wife participate in the property of the father (in the way specified above), and the ten remaining sons are successively entitled to a share of the property as well as to the membership of the family."[3] By reason of his being the propagator of the family and the giver of the funeral cake which is due by the proprietor, the son of an appointed daughter in the first place, and after him the adopted son, become entitled to the inheritance and to the membership of the family. "Successively" (or in other words) in succession, that is, in the absence of the first of these, the next in order is entitled to the inheritance and to the membership of the family.

39. Yájñavalkya declares the participation of the son of a female slave of a Súdrá: "Even a son, begotten by a Súdrá on a female slave may take a share at the desire of the father; but if the father be dead, the brothers should make him partaker of half a share; one who has no brothers (begotten by the father on a wife) may inherit the whole property in the absence of the daughter's son."[4] "At the desire" means, at the choice of the father; "a share" means, a share equal to that of other sons.

40. When, however, there is a daughter's son, he gets an equal share with the son of a female slave; and this is resonable, because the one is begotten by a woman who is not wedded and the other is a legitimate descendant.

41. Manu states the distribution (of property) between a true son and the issue of the wife begotten without due authority: "If there be two sons, a legitimate one and a son of the wife, who are claimants through the same (person) each shall take the property which belonged to his father: and not the other."[5] "Claimants through the same", means, claimants begotten by the same mother.

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[1] Vishnu, XVII. 3.
[2] II. Cole. Dig., 332, CXC.
[3] Manu, IX. 165.
[4] Yájñavalkya, II. 133 and 134.
[5] Manu, IX. 191.

The meaning is, let each receive the wealth of him from whose seed he sprang: and let not the other who sprang from the seed of another person take it.

42. As regards also the woman's property, let the son of each father take that which was bestowed on her by his father: and not the other. Accordingly, Nárada says: "If two sons begotten by two fathers, contend for the wealth of the woman, let each of them take that which was his father's: and not the other."[1]

CHAPTER III.

Partition by Brothers.

1. Partition of brothers after the death of the father is next explained. On this Devala says: "Let the sons divide the father's estate on the death of the father."[2] "The father's estate" signifies, the property inherited from the father. Nárada says: "Whatever remains after the father's gifts are given, and his debts liquidated, should be divided by the sons, so that the father might not remain a debtor."[3] 'The father's gifts' signify, what the father promised to give. It appears from the passage 'that the father might not remain a debtor', that in case of inability (to liquidate the father's debts at the time of partition) it ought to be acknowledged before the creditors that the debts shall be paid off after partition.*

2. Here (it should be remarked that) while the mother is alive, partition by uterine brothers is not compatible with moral duty, as is intimated by Sankha and Likhita: "Since inheritance is the basis of the family, the sons are not independent while their father is alive, also while their mother is in a similar predicament."[4] For the same reason Vyása says: "For brothers a common abode is ordained, so long as both parents are alive; but religious merit of them, if separated after their decease, increases."[5] The meaning is, because a separated brother performs the ceremonies enjoined by the Vedas with the wealth appertaining to himself alone, consequently there is an increase of religious merit of that one alone.

3. If however (the paternal property) be distributed (while the mother is alive), then the mother is entitled to participation. This is declared by Kátyáyana: "On the death of the father, the mother too partakes of an equal share with the sons."[6]

4. Participation of an equal share too is only when the mother has not got woman's property (stridhana); but if she has, a half

* Nárada's text indicates that the Hindus had to a certain extent the power of making a will.—Translator.

[1] Not found.
[2] II. Cole. Dig., 196, V.
[3] Nárada, XIII. 32.
[4] II. Cole. Dig., 203, XVII.
[5] *Ibid.* 284, CXIII.
[6] *Ibid.* 269, CIII.

share is to be allotted to her. This follows from the text cited before (ch. II, § 18).

5. Brihaspati describes two modes of partition either with or without specific deductions (of a twentieth part for the eldest and so forth): "For co-heirs two modes of partition are ordained: one in the order of seniority of age, and the other by allotment of equal shares."[1] The phrase 'in the order of seniority of age' intends specific deductions.

6. But the absence of specific deductions among the Súdrá class will be hereafter mentioned.

7. Although equal division is in conformity with the Sastras, still the alternative of specific deductions, taking place out of an excess of reverence towards the seniors in age, is not contradictory, in the same manner as partition or non-partition is optional (with the co-heirs).

8. On this Manu says: "But the eldest alone may take the paternal estate in its entirety: and the rest may remain dependent on him as they did on the father."[2] Also Nárada says: "Or the eldest brother may, like the father, support all the others, if they be willing: or even the youngest brother, if capable (may do so); for rank in a family is proportional to ability."[3] The middlemost of course may be here inferred from the analogy of the loaf and the staff.

9. This analogy is as follows: to gnaw the staff was difficult for the rat; but if that were accomplished, the eating of the loaf which was attached to it is inferred, because it is the easier, so, in other cases, according to their circumstances, if one of associated things be true the other may be rightly inferred.

10. Consequently as there is no distinction, Nárada says: "He, who being engaged in the management of the family performs its business, should be honored by the brothers with (presents such as) food, apparel and conveyances."[5]

11. Vyása praises one who acts in that way: "During whose life Bráhmins, friends and relatives gain their maintenance, his life is fruitful: for who does not live for his own sake?"[5]

12. In Harivamsa, Nárada addressing Indra describes the evils springing from a contrary conduct: "O, Destroyer of Bálá! mutual disagreement among brothers and friends causes only the delight of enemies: in this no doubt (can exist)."[6]

13. Here (it is to be remarked that) Nárada declares a common abode by the consent of all (the co-heirs).

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[1] Brihaspati, XXV. 7.
[2] Manu, IX. 105.
[3] Nárada, XIII. 5.
[4] Nárada, XIII. 35.
[5] II. Cole. Dig., 279, CIX.
[6] *Ibid*, 284, CXII.

14. But partition is not so. This is indicated by Kátyáyana, who, after having commenced (the subject of) partition, says: "The wealth of those that have not attained to maturity, as also of those that have gone to a distant place, should without expense be entrusted to the relatives, who are friendly disposed to them."[1] "Those that have not attained to maturity" means, the minors.

15. If one of the co-heirs by reason of his own ability, decline to take his share of the property inherited from the father or other ancestor, something should be given to him, be it only a *prastha* of rice, on his separation, for the purpose of obviating denial in future, on the part of his son or other heir. This is ordained by Manu: "If any one of the brothers has a competence from his own occupation, and desires not the property, he may be debarred from his share, by giving him some trifle in lieu of maintenance."[2]

16. Kátyáyana says: "The visible objects, such as a house, a field and a quadruped, should be distributed: on suspicion of some hidden property, some test is ordained."[3] "Test" signifies, divine test (such as ordeals by the balance and the like).

17. This text is rendered clear (by the following text): "Bhrigu declared, that visible objects, such as household furniture, conveyances, those (quadrupeds) that are milched, ornaments and workmen, should be distributed: on suspicion of some hidden treasure, resort must he had to *kosha*."[4] "Household furniture" means, pestle and the like; "workmen" indicates, slaves; *kosha* signifies, a particular thing, and its meaning is to be searched for in a treatise on things (*i.e.*, in a vocabulary); the rest is well known.*

18. Nárada says: "For those whose forms of initiation have not been, in the prescribed order, performed by the father, these ceremonies must be completed with their paternal property. But, if no wealth of the father exist, the ceremonies must, without fail, be performed by the brothers already initiated, contributing funds out of their own portions."[5]

19. To the daughters, however, property sufficient to defray the expenses of marriage should be given, as is said by Devala: "Wealth sufficient for marriage should be allotted to the daughters out of the estate of the father. And the legitimate daughter of one

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* The divine tests are described in the Mitákshará, Vyavahára Section, Chapter VIII. The following text of the Mitákshará in which the term *kosha* occurs, enumerates the divine tests:

Mr. Macnaughten translates this text in the following way: "The balance, water, fire, poison and sacred libation are the divine tests for purgation (or the removal of suspicion in a doubtful matter). Here the term *kosha* is rendered into 'sacred libation', which signifies the water in which the idol worshipped by the person whose truthfulness is to be tested, is bathed; the person is then ordered to drink a portion of that water."

[1] II. Cole. Dig., 576, CCCCLIII.
[2] Manu, IX, 207.
[3] II. Cole. Dig., 484, CCCLXXIV.
[4] Do. do.
[5] Nárada, XIII, 33 and 34.

without male issue is, like the sons, entitled to inheritance."[1] Vishnu says: "But of maiden daughters the ceremony of marriage should be performed, according to one's own inheritance."[2]

20. Thus the texts which ordain the allotment of a fourth share (to a maiden daughter), are to be construed to signify the allotment of property sufficient for marriage.

21. The following text of law cited in the Dvaitanirnaya declares that the ceremonies of marriage may be performed even by relatives other than the father: "Let the father himself or any other in his absence, according to the (recognized) order, perform the eight rituals, such as the causing of conception and the like."[3]

CHAPTER IV.

EXCLUSION FROM INHERITANCE.

1. In the next place, those that are excluded from inheritance (are determined). Ápastamba says: "All co-heirs who are endued with virtue are entitled to the property. But he who dissipates his wealth by vices, should be debarred from participation, even though he be the first-born."[4] The meaning is, even though he be the first-born son.

2. The same opinion is propounded by Brihaspati, who says:—"Though born of a woman of equal class, a son destitute of virtue is unworthy of the paternal wealth. It is declared to belong to such kinsmen offering funeral oblations to him, as are of virtuous conduct."[5] "Offering funeral oblations to him" means, offering funeral oblations to the owner; therefore it is said "of virtuous conduct"; "destitute of virtue" means, having defects inconsistent with virtue. In the Ratnákara the last line of the text of Brihaspati is read as follows:—"Those offering funeral oblations to him shall accord food and raiment to those destitute of virtue." In this reading too it appears as a matter of course that the funeral oblations are offered to the owner.

3. "As a man passing over water on a bad raft, sinks, so a person with a bad son becomes immersed in the deepest darkness."[6]

4. Kátyáyana says: "Property is created for (the performance of) religious ceremonies; therefore property should be entrusted to persons who are worthy of property, and not to women, to the ignorant and to the vicious."[7]

5. The term "women" in the above text signifies wives of kinsmen, and not the owner's wife and the like with regard to whose succession there are special provisions.

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[1] II. Cole. Dig., 543, CCCCXX.
[2] Vishnu, XVIII. 35.
[3] II. Cole. Dig., 301, CXXXIV.
[4] Ápastamba, II. 6, 14; 14 and 15.
[5] Brihaspati, XXV. 42.
[6] Manu, IX. 161.
[7] II. Cole. Dig., 602.

6. Also, "A son who is devoid of science, heroism and the like, who is destitute of devotion and charity, and who is wanting in (religious) observances, is similar to urine and excrement."[1]

7. Sankha says: "He who takes the property of the deceased without performing the funeral obsequies, should without fail perform the expiatory rite, which is ordained for the classes in atonement of murder."[2]

8. Devala declares: "When the father is dead, an impotent man, a leper, a madman, an idiot, a blind man, an outcast, the offspring of an outcast and a person wearing the badge (of religious mendicity) are not competent to share the heritage. Food and raiment should be given to them excepting the outcast. But the sons of such persons, being free from similar defects, shall obtain their father's share of the inheritance."[3]

9. "An idiot" is one incapable of performing religious duty; "blind" signifies one who is born blind, by reason of the text of Manu, which says: "Likewise those that are blind and deaf from their birth;"[4] "a person wearing the badge" is one who has assumed a hypocritical mark of austerity.

10. Nárada ordains: "An enemy to his father, an outcast, an impotent person, and one who is addicted to vice (or has been expelled from society) take no share of the inheritance, even though they be legitimate; much less if they be sons of the wife."[5] "An enemy to his father" is one who abuses him by beating and the like while he is alive, and who is unwilling to perform his funeral obsequies when he is dead. The term of which the translation is "one who is addicted to vice" literally signifies, one stained with sins. But the author of the Kalpataru reads it as *Apapátrita* and explains it to mean one who is excommunicated by his relatives, on account of heinous crimes, such as murdering the king, and so forth. The author of the Prakása, having read it as *Upapátaki* expounds it as signifying one who has committed sins.

CHAPTER V.

Effects liable or not liable to Partition.

1. In the next place are discussed partibility and impartibility. On this Vyása says: "What a man acquires by his own ability, without relying on the patrimony, he shall not give up to the co-heirs, nor that which is acquired by learning."[6]

2. Kátyáyana describes the wealth acquired by learning: "What is gained through learning by the solution (of a difficulty)

[1] Brihaspati, XXV. 45.
[2] I. Cole. Dig., 444, XXXIX.
[3] II. do. 426, CCCXXI.
[4] Manu, IX. 201.
[5] Nárada, XIII. 21.
[6] II. Cole. Dig., 451, CCCLIV.

after a prize has been offered, must be considered as acquired through science, and is not distributed (among co-heirs). What has been obtained from a pupil or by officiating as a priest, or for (answering) a question, or for determination of a doubtful point, or through display of knowledge, or by (success in) disputation, or for superior (skill in) reading, the sages have declared to be the gains of science and not subject to distribution. The same rule likewise prevails in the arts. The excess of price (of the common goods) over the current one, and that which is gained through skill by winning from another a stake at play, must be considered as 'acquired by science' and not liable to partition. So Brihaspati has ordained."[1]

3. The author of the Dáyabhága makes the following explanatory comments on this text:—"If you solve this well, I will give you so much money," after such an offer if one solve the difficulty and obtain the prize, it is not subject to distribution: "From a pupil," from a person instructed by the acquirer: "by officiating as a priest," received as a fee or gratuity from a person employing him to officiate at a sacrifice; these are fees not presents, for they are similar to wages: so a question relative to science being resolved; if any one through satisfaction, give anything which had not been previously offered: also what is obtained by clearing the doubts of one by whom an offer has been thus made: "To him who removes my doubts on the meaning of this passage of the Sastras, I will give this gold"; or it may signify a fee such as the sixth part or the like, received for a correct decision between two litigant parties, who apply for the determination of a dubious and contested point: likewise what is received as a present and the like for displaying his knowledge in the sacred ordinances and so forth: so in a contest between two persons respecting their knowledge of sacred ordinances, or in any other controversy whatsoever concerning their respective attainments, what is gained by surpassing the opponent: likewise where a single article is to be given, and there are many competitors, what is received for reading in a superior manner: also what is gained by painters, goldsmiths and other artists through their skill in the arts and so forth: in like manner what is gained by beating another at gambling. All this is exempt from being shared with the rest of the coparceners. Therefore whatever is acquired by any (skill or) science belongs to the acquirer, not to the rest. Only to show this Kátyáyana has stated at large.

4. Nárada says: "He who maintains the family of a brother studying science shall take, be he ever so ignorant, a share of the wealth gained by science."[2] From the singular number in the verb "maintains" it appears that if a person, by his own expense or bodily exertion maintain the family of his brother while he is studying science (or art), then he has a right to the property acquired through science (or art). "Ignorant" means, illiterate.

[1] II. Colc. Dig., 444, CCCXLVII. [2] Nárada, XIII. 10.

5. A text of Kátyáyana cited in the Kalpataru, in the Mitákshará, and in the Dípakálika, says: "Wealth gained through science, which was accquired from a stranger while receiving a foreign maintenance, is termed acquisition through learning."[1] "From a stranger" means, from one different from the families of the father and mother.

6. On this (point) he again lays down a special rule: "No part of the wealth which is gained by science, need be given by one versed in learning to his unlearned co-heirs, but such property must be yielded by him to those who are equal or superior in learning."[2] The term "in learning" which occurs only once in the text is to be construed with both; consequently a share is to be allowed to one equal in learning and to one superior in learning, not to one inferior in learning, nor to one without learning. 'Versed in learning' means, learned.

7. Another special rule is laid down, (by the same sage): "The property of brothers who have acquired learning from the family or the father, also that gained through heroism are liable to distribution. So Brihaspati has ordained."[3] Of this text the following explanation is given in the Kalpataru and the Ratnákara: "That property which is gained through knowledge and courage by brothers who have acquired the learning (or skill) from the family (that is to say) from his own family (or in other words) from the paternal grandfather, uncle and the like or from the father, is subject to distribution."

8. Kátyáyana again ordains: "The father is entitled to a moiety or a double share of a son's acquisition of wealth." "A son's acquisition of wealth" signifies, wealth acquired by a son. This follows from the following rule (of grammar) namely, "A participle affix to a verb, which transforms a verb into an abstract noun, sometimes bears the sense of a past passive participle."

9. The father's participation of a double share takes place when the acquisition is not made with the use of the paternal property, or when it is made with the use of a brother's property. The acquirer, however, takes a double share. But when the brothers' wealth is used, then each of them also takes a share as is intimated by a text of Vyása which will be hereafter quoted (§ 18). The father's participation of a moiety, however, takes place according to the Dáyabhága, when the father's property is used or when the father is endowed with excellences. When no other's property is used, then the father takes a double share, the acquirer also as such is entitled to two shares, the rest getting nothing: but when a brother's wealth is used, he also takes a share. This is the explanation of the distinction between a double share and a moiety.

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[1] II. Cole. Dig., 444, CCCXLVII. [2] II. Cole. Dig., 449, CCCL.
[3] II. Cole. Dig., 448, CCCXLIX.

10. Kátyáyana again declares: "The pasture ground, the carriage road, clothes, and anything that is worn on the body should not be divided; nor what is requisite for use or intended for arts: so Brihaspati has declared."[1] "Requisite for use" is what is fit for each person's use, as books and the like which should not be shared by the learned, &c., with his ignorant co-heirs. The same explanation is given in the Dáyabhága, Madanapárijáta and others.

11. Yájñavalkya says: "Whatever is given by the parents (to any child) let that become solely his property."[2] The very learned Súlapáni (offers the following explanation): "Whatever ornaments and the like are given to a son or daughter become exclusively his or hers."[3]

12. Nárada says: "Both what is gained by valour and the wealth of a wife, as well as what is acquired by science; these three (sorts of property) are exempt from partition; so also any favour conferred by the father."[3] "The wealth of a wife" signifies, the wealth received at the time of receiving the wife, that is, at the time of marriage: this meaning is indicated by the following text of Bharadvája; "And what is received with the wife." If "excepting" be read instead of "both" (in the text of Nárada) then the text "excepting these three *which* are exempt from partition", should be construed with "the rest shall be divided", which passage occurs in a preceding text (of Nárada). Therefore (the meaning would be unchanged, *viz.*,) these three are exempt from partition.

13. When an object, which is bestowed as a favour, forms the subject of gift to two persons in succession, it becomes the property of the first donee. This follows from the following text of Yájñavalkya: "In all disputes (concerning property) the posterior act prevails. But in cases of pledge, gift or sale the prior act predominates."[4] Here the meaning is that what prevails is valid.

14. In connection with this, also it is to be understood that an act of pledge prevents the use of the property by the owner according to his own will; and not that it is completed by the destruction of the owner's right. Therefore an act of pledge, whether prior or posterior, is controlled by the predominant acts of gift and sale which are completed by the extinction of the previous owner's right.

15. To this effect is the following text of law cited in the Ratnákara and others: "If after making a bailment or pledge, a pledge or sale be made, then the posterior act prevails."[5] The construction is that if after making a bailment a pledge be made (of the same thing) or if after making a pledge a sale be made, then the posterior act is valid. The term "sale" includes gift, by reason of the destruction of the previous owner's right (being similar in both cases).

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[1] II. Cole. Dig., 471, CCCLXV.
[2] Yájñavalkya, II. 123.
[3] Nárada, XIII. 6.
[4] Not found.
[5] I. Cole. Dig., 431, XXVIII.

16. Thus also if the pledge be not redeemed by reason of death or the like of the seller or donor, it may be redeemed by the buyer or donee, because a right equal to that of the former owner has been generated by the sale or gift. In such a case if a dispute arise as to the source of the right, then the buyer or the donee (who is admitted as such) is required to prove his possession and not the commencement of his title.

17. Sankha and Likhita declare: "No division of a dwelling-house takes place; nor of water-pots, ornaments and things not of general use; nor of women, clothes and channels for draining water. Prajápati has so ordained."[1] If one of the co-heirs constructs a house or garden within the site of the dwelling-place, and another does the same in a different part, in that case what is constructed by each becomes his property. So in other cases also.

18. With regard to the property acquired (by one of the co-heirs) through the use of joint-stock, a special rule is propounded by Vyása: "The brothers participate in that wealth which one of them gains by valour or the like using any common property such as a weapon or vehicle. To him two shares should be given: but the rest should share alike."[2] It should be observed that the term "brothers" in the text includes also the uncle and the like. The following explanation is given in the Dáyabhága: "If the joint stock be used by the acquirer, shares should be assigned to each coparcener in proportion to the amount of his allotment, be it little or much, which has been used."

19. Nor should it be alleged that by the following text of Vyása one coparcener has no power to give, mortgage or sell any property: "A single parcener may not, without the consent of the rest, make a sale or gift of the whole immoveable estate, nor of what is common to the family. Separated kinsmen, as well as those who are unseparated, are equal in respect of immoveables: for one has no power over the whole to give, mortgage or sell it."[3]

20. "Because the right of property over the joint estate is not distinguishable from that over any other thing, and this right is nothing else but the capacity of dealing with the property according to pleasure".

21. "The text of Vyása embodying a prohibition, however, is intended to show that a moral offence is committed, if, by an exercise of the right, the property be transferred to a person of bad character; since the relatives would be troubled by such a proceeding:* and not that the sale and the like would be invalid." The above explanations are given in the Dáyabhága.

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* The author of the Dáyabhága indicates the same principle on which the law of pre-emption is based.

[1] II. Cole. Dig., 468, CCCLXII. [2] II. Cole. Dig., 281, CX.
[3] Found in Brihaspati, XXV. 98.

22. The author of the Vivádachintámani expounds the text of Vyása in the following way: "When the co-heirs are separated (in mess,) but the estate, instead of being distributed, continues joint, then because their rights are undistinguishable, one has not power over the whole property. But when the shares are separated, then, of course, the exercise of power by one is valid."

22. But in fact the taking of permission after partition is ordained for the purpose of obviating any doubt as to the boundaries and the like, of what has been divided as well as of what remains joint, in the same manner as the permission of the head of the village and of the like is taken.

23. Consequently the use of property without the sanction of the separated co-heirs, is valid.

24. The same doctrine is propounded in the Mitákshará by the following text: "Land passes by six (formalities); by consent of townsmen, of kinsmen, of neighbours and of relatives, and by gift of gold and water."[1] "Relatives," signifies, daughter's son and the like (who are sprung from a different family); since, kinsmen are separately mentioned.

25. "By gift of gold and water." Since the mere sale of immoveables is forbidden by the following text of Devala: "In regard to the immoveable estate, sale is not allowed, it may be mortgaged by consent (of parties interested);"[2] and since donation is praised, in the following text: "Then he who gives and he who accepts land, both of these perform a virtuous act and are certainly entitled to go to heaven,"[3] therefore if a sale must be made, it should be conducted for transfer of immoveable property, in the form of a gift, delivering with it gold and water (to ratify the donation). This explanation is given by Vijñánesvara.

26. But in reality, the prohibition of the sale of immoveables is in respect of joint estate. As regards even that, if support is impossible without sale, then when a sale must be made, it may, at the desire of the buyer, be conducted in the form of a gift, in order to obviate any dispute with the co-sharers.

27. Wherefore the figurative predication of gift by Hárita in the following text: "And what is given to a benefactor,"[4] refers to a (sale in the form of) gift to a benefactor who saves from distress (by paying the consideration).

As to gifts made to any other benefactor, Daksha states the religious merit arising from them: "What is given to the mother and father, to a friend, to a disciple, to a benefactor, to the poor, the orphan and the learned, becomes fruitful."[5]

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[1] I. Cole. Dig., 441, XXXIII.
[2] Not found.
[3] I. Cole. Dig., 444, XLI.
[4] *Ibid*, 451, LI.
[5] I. Cole. Dig., 451, LI.

28. Therefore Nárada says: "Should they give or sell their own shares, they may do all that as they please, for they are masters of their own wealth."[1]

29. Yájñavalkya says: "He who recovers hereditary property which had been taken away, shall not give it up to the coparceners: nor what has been gained by science."[2] He who recovers, with the sanction of the other coparceners, property inherited from the father or grandfather which had been forcibly taken away by strangers shall not yield it to the other co-sharers.

30. Sankha lays down a special rule regarding land: "Land (inherited in regular succession) which had been formerly lost, but which a single (heir) recovers solely by his own labour, the rest may divide according to their due allotment, having first given him a fourth part."[3] In the Ratnákara it is affirmed that this text is not consonant to reason because it is not cited in the Smritimahárnava, Kámadhénu, Párijáta and others. This is not (tenable) because it is quoted in the Dáyabhága, Mitákshará and the like.

31. In the Mitákshará a special rule is laid down regarding ancestral property which had been lost but recovered: "Though immoveables or bipeds (slaves) have been acquired (*i.e.*, recovered,) by a man himself, a gift or sale of them should not be made unless convening all the sons; they who are born and they who are yet unbegotten and they who are actually in the womb, all require the means of support: the dissipation of their (hereditary source of) maintenance is censured."[4]

32. To this an exception (is mentioned): "Even a single (coparcener) may make a gift, bailment or sale of immoveable estate at a time of danger, for the sake of the family and specially for a religious purpose."[5] "Bailment" signifies mortgage.

33. Manu declares that gift, mortgage, or sale for the purpose of the family is valid even when made by a slave: "Even the most dependent may make any transaction for the sake of the family: the master (remaining) either in his own country or a different one should not refuse his sanction."[6] Kullúka Bhatta writes the following gloss on this text: "While the master is in that place or in a different one, even a slave may contract debts and the like for the use of the family: the master should sanction the same."

34. Brihaspati clearly ordains: "The master of the house is liable to pay for what is taken for the sake of the family, by an uncle, a brother, a son, a wife, a disciple and the dependents."[7]

35. Manu says: "The coparceners though separated should out of their own (share) pay for what has been taken and expended

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[1] Nárada, XIII. 43.
[2] Yájñavalkya, II. 119.
[3] II. Cole. Dig., 464, CCCLIX.
[4] I. Cole. Dig., 411, XII and XIV.
[5] *Ibid*, 458, LV.
[6] *Ibid*, 203, CXC.
[7] Brihaspati, XI. 50.

for the purpose of the family, should the taker abscond."[1] "From their own" signifies, from their own property.

36. Kátyáyana declares: "What is taken for the use of the family in time of need or disease, or by reason of distress, is known as done through danger; as also for the marriage of daughters; and what is done for the benefit of the departed: all this done by a relative is due of the master."[2] The family must at any rate be supported. In this text, the genitive in the phrase "due of the master" signifies, the agent, therefore the meaning is "should be paid for by the master". This explanation is given in the Ratnákara.

37. The following is extracted from the Dáyabhága:—Hárita says: "While the father lives, sons have no independent power in regard to the receipt, expenditure and bailment of wealth. But if he be decayed, remotely absent, or afflicted with disease, let the eldest son manage the affairs as he pleases."[3] So Sankha and Likhita explicitly declare: "If the father be incapable let the eldest manage the affairs of the family, or with his consent a younger brother conversant with business. Partition of the wealth does not take place if the father be not desirous of it. When he is old or his mental faculties are impaired, or his body is afflicted with a lasting disease, let the eldest like the father protect the wealth of the rest, for (the support of) the family is founded on wealth. They are not independent while they have their father living nor while the mother survives."[4] These two passages forbidding partition when the father is incapable of business or when he labours under a lasting disorder, direct that the eldest son should superintend the household, or a younger son who is conversant with business.

38. Consent, however, may be inferred from the absence of prevention. This follows from a text of Kátyáyana cited in the Práyaschittavivéka: "When the master does not prevent the gift of his own property by a co-sharer or even a stranger, then the gift is in effect, made by himself. This is ordained by Bhrigu."[5]

39. To this effect is the following aphorism of the logicians, namely, a statement not traversed is equivalent to an admission.

40. Thus, such a gift becomes valid by reason of the absence of dissent.

CHAPTER VI.

Ascertainment of a Contested Partition.

1. The determination of a doubt regarding the fact of partition having been made is next explained: Sankha ordains: "Should a doubt arise on the subject of partition of the wealth of kindred, the family may give evidence, if the matter be not known to the

[1] Found in Nárada, I. 13.
[2] I. Cole. Dig., 204, CXCIII.
[3] II. Cole. Dig., 199, VIII.
[4] *Ibid*, 203, XVII.
[5] Not found.

relations sprung from the same race."[1] "A doubt on the subject of partition of the wealth of kindred" intends, a doubt on the subject of partition of what is liable to be distributed among the kindred, *i.e.*, a doubt regarding the fact of a partition having been made, and a doubt regarding the liability of a particular property to distribution. "The family", *i.e.*, the cognates, and only in their default, a stranger may give evidence.

2. Brihaspati describes a deed of partition: "The brothers who are separated, however, of their own accord, execute an instrument of distribution (at the time of separation): this (instrument) is called the deed of partition."[2]

3. A text of Brihaspati cited in the Vyavahâramâtrika declares: "Should a village, a field and a garden be written in (conveyed by) a single instrument, all these become enjoyed by the possession of a single portion."[3] "Instrument" signifies, a writing and the like.

4. But in the absence of enjoyment of even a single portion, there is a loss of the whole of what forms the subject of sale and the like. This is declared by the same (sage): "Title to immoveable property which is received at partition or by purchase, or which is ancestral or granted by the king, becomes completed by enjoyment, but is lost through neglect (of enjoyment). He who enjoys unmolested (the property) as soon as it is received, has his title completed, but loses it, if he neglects."[4] What is received at partition, by purchase and the like, passes to the coparceners, the vendee, and the like, when followed by possession, but loss arises if enjoyment be neglected.

5. Nârada says: "Gift and acceptance of gift, cattle, grain, house, field and attendants must be considered as distinct among separated brothers; as also diet, religious duties, income and expenditure. Separated and not unseparated brothers may reciprocally bear testimony, become sureties, bestow gifts, and accept presents. Those by whom such matters are publicly transacted with their co-heirs may be known to be separate even without a deed of partition."[5]

6. For the same reason Yâjñavalkya says: "Brothers, also husband and wife, likewise father and son cannot, when not separated, bear testimony, become surety or contract debt,"[6] *i.e.*, reciprocally.

7. Although there is no partition between husband and wife, and the absence of partition is indicated by Âpastamba: "Also in fruits of pure and impure acts (equal shares); also in discussing wife's right, her right is declared to extend during his lifetime to every

[1] II. Cole. Dig., 496, CCCLXXXVI.
[2] Brihaspati, VIII. 5.
[3] *Ibid*, IX. 18.
[4] Brihaspati, IX. 5 and 6.
[5] Nârada, XIII. 38 and 39.
[6] Yâjñavalkya, II. 52.

property belonging to her husband;"[1] also in the Sráddhaviveka it is declared, "that property lies between husband and wife", *i.e.*, belongs to two masters, namely, husband and wife: still husband and wife are enumerated in the above text of Yájñavalkya because it is ordained in the following text of the same sage, that when the father distributes shares among his sons, he should allot one to a sonless wife: "Should the father make his sons partcipators of equal shares, he should allot like shares to his wives."[2]

8. "The wife and the son and the slave, these three are incapable of holding property."[3] From the declaration of incapability of holding wealth as in the text, it is argued that the expression of the absence of partition (between husband and wife, by Ápastamba, is to indicate the wife's right to every Vedic ceremony, she being an indispensable associate.

9. This argument is not tenable. Because in the latter half of the same text which runs as follows: "What they acquire becomes his property, whose they are,"[4] is ordained the absence of independence of the wife and the rest, regarding even their self-acquired property without the permission of the husband and the like; also because there is a separate enumeration (of religious acts) in the latter part of the text of Ápastamba, *viz* : "likewise also in the fruits of pure and impure acts".

10. Therefore as the prohibition, namely, "there is no partition between husband and wife" implies the existence of previous partition, consequently the common right of both over the same property is indicated.

11. Otherwise in the absence of the common right of both, partition itself would be unreasonable; consequently there would not have been the prohibitory proposition.

12. This is also the meaning of the unity (of husband and wife) declared by Laghuhárita: "Because she attains to unity (with her husband) through clarified butter, sacred text, burnt offering and religious observances."

CHAPTER VII.

THE SHARE OF ONE WHO WAS ABSENT AT THE TIME OF PARTITION.

1. Allotment of a share to a relative returning after a long residence abroad is now discussed. On this Brihaspati declares: "If a man leaving what is common to the family, reside in another country, his share must no doubt be given to his male descendants when they return. Be the descendant third or fifth or seventh in degree, he shall receive his hereditary allotment on proof of his birth

[1] Ápastamba, II. 6, 14, 16 and 17.
[2] Manu, VIII. 416.
[3] Yájñavalkya, II. 115.
[4] Do.

and name. To the lineal descendants, when they appear, of that man whom the neighbours and old inhabitants know by tradition to be the proprietor, the land must be surrendered by his kinsmen. The enjoyment by strangers for three generations no doubt creates a title. The same is not true of descendants of the same family until the discontinuance of sapindaship. But a house, a field, a shop and the like belonging to a friend, a relative or a kindred, enjoyed by one who is not the owner, are not lost through that enjoyment. A thing enjoyed even for a long time by one related through marriage, by one versed in the Vedas, by the king or his minister does not, however, become his property."[1]

"Common to the family" signifies, property which is common to the family. "Strangers" means; those that are different from those that are descended from the same family.

"One related through marriage" is the son-in-law.

These explanations are found in the Vivádachintámaṇi.

2. Nárada says: "That cannot be taken away which has been enjoyed though without title, by the three (ancestors) previous to the father, and which has descended in succession through three generations."[2]

In this text "previous to the father" signifies, ancestors beginning with the father, by reason of the text which says: "The fourth shall take."

3. Vyása distinguishes enjoyment: "When the father, grandfather and great-grandfather are alive, the enjoyment by them during their joint lives is recognized as that of one generation."[3]

Simultaneous enjoyment though extending to a period of sixty years is not tantamount to an enjoyment of three generations; since as in that case only the great-grandfather is independent, the enjoyment is considered to be his. Then it is asked what denomination does that enjoyment bear? This is answered by the passage "is considered that of one generation".

4. Vyása describes what is to be considered as an enjoyment of three generations: "When the great-grandfather enjoys and after him his son, and after them the father, then a person's enjoyment is said to extend to three generations."[4]

5. As to the period to which the enjoyment of each should extend, Vyása declares: "When the owner enjoys without obstruction for a period of twenty years, that enjoyment is said to extend to one generation; twice that period is called extending to two generations, thrice that period, extending to three generations. In such a case the origin of title it is not necessary to enquire."[5]

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[1] Brihaspati, XXV. 24, 25 and 26.
[2] Nárada, IX. 10 and 11.
[3] Not found.
[4] Do.
[5] Not found.

Here "without obstruction" implies, in the presence of the opposite party.

The enjoyment for sixty years is in unison with what is expressed in this text; therefore neglect for a longer period determines the right.

6. Brihaspati too says: "He who purchases land shall, when his right is contested, prove in a Court of Justice both his title and possession: but his son shall prove only possession, his grandson or any other remote descendant need prove nothing."[1]

7. Yájñavalkya ordains: "He by whom an acquisition of property is made, must when sued, recover the same (by evidence of title); but neither his son nor grandson (need do the same); for in their case the enjoyment is the most essential (evidence)."[2]

8. Kátyáyana describes the enjoyment which is (legally) valid (for the purpose of dispensing with the evidence of title): "Enjoyment is held to consist of five elements, namely, the source of right, long period, the absence of interruption, the absence of adverse claim and the presence of the opposite party."[3]

CHAPTER VIII.

Distribution of Concealed Property.

1. The distribution of that, which was concealed at the time of partition, but is afterwards discovered, shall be now taught. On this Kátyáyana says: "If the father be deceased let the sons meeting together divide, with their brothers, whatever was concealed by any of the co-heirs. Effects which are withheld by them from each other, and property which has been ill-distributed, being subsequently discovered shall be distributed in equal shares. (So) Bhrigu (has ordained)."[4]

Because the phrase "subsequently discovered" is inserted in the text, therefore without the discovery by means of human proof, of anything concealed, neither a redistribution may be made nor recourse may be had to divine proof. Otherwise, there cannot be a perfect distribution in any case, if divine proof be not resorted to; since, through the influence of the witch Suspicion, some effects may be deemed to lie somewhere concealed. The phrase "ill-distributed" shows redistribution of what has been imperfectly distributed.

2. The following texts of Manu, Nárada, Brihaspati and Kátyáyana refers to a case of perfect distribution: "Only once may a distribution of shares take place, only once may a maiden be

[1] Not found.
[2] Yájñavalkya, II. 28.
[3] Not found.
[4] II. Cole. Dig., 485, CCCIXXV. 11.

given (in marriage), only once may the same article be given (by an owner) : these three may occur but once."[1]

3. Likewise the following text of Brihaspati cited in the Ratnákara, namely: "Whatever has been enjoyed by a co-heir as his share shall not be interfered with. Should he, who has signified his assent to a distribution, litigate again, the king shall adjudge his own share to him, and shall punish him, if he persists in litigation,"[2] refers to an optional inequality in the shares, but not to an imperfect distribution caused by error and the like. This is indicated by the insertion, in the text, of the term "assent".

4. From the phrase "subsequently discovered" (§ 1), it appears that the distribution takes place of that alone (which is subsequently discovered) : but what has been once divided need not be distributed again.

5. The phrase "in equal shares" is inserted (§ 1) with a view to obviate any such argument as that by reason of his concealment, no share or a small share should be allotted to him who withheld.

6. "Bhrigu" (§ 1), *i.e.*, 'has ordained', to which the accusative is the meaning of the whole sentence.

7. Visvarúpa, Haláyudha and others offer the following explanation (of the text of Kátyáyana) namely:—"Inasmuch as the distribution of what is subsequently discovered, follows from the very fact of there having been no distribution of it, the text (§ 1) was intended (by the sage) to show that the offence of theft is not committed in such a case."

8. What they intend is that the import of the verb "to steal" is inapplicable to a case of concealment by a co-heir. Because it is clear from the term "another" in the text of Kátyáyana which says: "Stealing is defined to be the taking of another's property," that the ownership of another must be exclusive of the ownership of the taker. As for instance, if the Mudga be unavailable, then the Masha would be the substitute for it: consequently the use of the Masha is prohibited by the text: "The Masha is not fit for sacrifice." Here the prohibition refers to the thing composed of the constituent parts of the Masha alone, but not to that formed of the constituent parts of both the Masha and the Mudga. Similarly, in this case too, theft is committed by the taking of effects belonging to another exclusively, but not by the enjoyment of joint property which is common to himself and the others. Also because, of what is common and what is exclusive, what is exclusive is the sooner understood.

9. Consequently theft is committed by stealing property, distinctly knowing it to belong to another, and not by using another's property mistaking it for his own. This is the opinion of Jinendra and the authors of the Dáyabhága and the Práyaschittavévika.

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[1] Manu, IX. 47.

[2] Brihaspati, XXV. 94 and 95.

10. Their assertion, that the appropriation of another's property by mistaking it for his own is not theft, appears unsatisfactory, for it is at variance with the following story of Nriga in the Bhagabat: —"A cow belonging to a certain eminent priest, strayed into my herd of kine, and being confounded with them was given by me, ignorant of the circumstance, to a man of the sacerdotal order. The owner seeing her led away, claimed her for his own; and the other replied, 'she was mine by gift, Nriga gave her to me'. The priests contending addressed me, setting forth their claims: 'You are the giver,' said the one; 'the lawless taker', said the other. Hearing this, I was confounded. For that sin I was transformed into a lizard since which time I have seen myself, O Lord! in this degraded form."

11. But if many rings belonging to divers persons be mixed together, it is not theft if one sell another's ring by mistake for his own, in consequence of their similarity: for they were placed together under the conviction, that, in the case of many articles which have no discriminative mark, as cowries and the like, belonging to different persons, being intermixed, no offence is committed if they are reciprocally used by a sort of barter: else a person would not do so under the apprehension of offence. But if through dishonesty anything is so placed for profit, then theft is committed.

12. The following passage of the Matsyapurána relates to a case like this: "The man who, through ignorance makes a sale of another man's chattels, is faultless; but wilfully doing so he merits punishment as a thief." This text intends that punishment shall not be inflicted upon one who does so through ignorance.

13. Therefore theft is the disposal of property which is the subject of the exclusive right of another person without such person's consent and with the intention, "this is mine, and shall be disposed of according to my pleasure".

14. Sometimes it is mental, consisting of the intention only. In other instances it is corporeal as an actual gift or sale or the like.

15. But such a theft is not possible in the case of the property of the undivided brothers and the like: for then it cannot be distinctly ascertained "this is mine and that is another's".

16. To the same effect is the following text of Kátyáyana: "Effects which have been stolen by a co-heir, he shall not be compelled by violence to restore. A coparcener is not liable for the use of any article which belongs to all the undivided kinsmen."[1] Here "stolen" is used metaphorically. He should be persuaded to restore by gentle means but not by violence.—Should an unseparated kinsman consume a greater portion, he shall not be required to refund the excess.

[1] II. Cole Dig., 486, CCCLXXVII.

17. Thus also there is no offence in taking a treasure which is found; for it is a thing of which the owner is lost. So Manu declares: "When the king finds a treasure he shall bestow half of it to Bráhmins. But a learned Bráhmin (finding treasure) shall appropriate the whole of it, because he is the lord of all. If treasure is discovered by any other, the king takes a sixth of it. But a discoverer who gives no information to the king, and is detected, shall be bound to disgorge it to the king and shall moreover be liable to punishment."[1]

18. Such is not the case with associated traders: for no text indicates it. On the contrary, it is directed by the following text of Yájñavalkya, that a fraudulent partner shall be dismissed without profit: "Shall turn out a deceitful (partner) profitless."[2] Traders have not, as in the case of inherited effects, a right vested in several persons with respect to the same chattel. But, by reason of intermixture, their right of property in the goods is only uncertain.

CHAPTER XI.

Stridhana or Woman's Property.

1. Stridhana or woman's property is now described. On this Kátyáyana says: "The wealth which is earned by mechanical arts, or which is received through affection from a stranger, is subject to her husband's dominion; the rest is pronounced to be the woman's property."[3] What is received from a stranger, that is from a person not sprung from the family of her father, mother or husband, and what is earned by mechanical arts are subject to the husband's control. Hence though the property be hers, it does not constitute woman's property, because she has not independent power over it. But a woman's right is complete in other descriptions of property, excepting these two; for she has the sole power of gift or other alienation.

2. Manu and Vishṇu declare: "The heirs should not divide an ornament worn during her husband's lifetime: they are degraded if they partake of it."[4] Medhátithi explains this text in the following way: "An ornament or the like though not given by the husband, but put on with his sanction, becomes the property of the wife by act alone."

3. Kátyáyana says: "That which is received by a married woman or a maiden, in the house of her husband or father, from her husband or from her parents, is termed the gift of affectionate kindred. The independence of women who have received such

[1] Manu, VIII. 38 and 39.
[2] Yájñavalkya, II. 265.
[3] II. Cole Dig., 589, CCCCLXX.
[4] Manu, IX, 200; Vishṇu, XVII, 22.

gifts is recognised in regard to that property: for it was given by the kindred for their maintenance and to soothe them. The power of women over the gifts of their affectionate kindred is declared by all the sages, both in respect of donation and sale according to their pleasure."[1] What is obtained from kind relatives of her father, mother or husband is called the gift of affectionate kindred. "To soothe them", that is, out of kindness towards them.

4. Nárada says: "What has been given by the affectionate husband to his wife, she may, even while he is dead, consume or give it away according to her pleasure, excepting immoveable property."[2] From the adjective "given by the husband", it appears that immoveable property other than that given by the husband may of course be given away.

5. Otherwise it would be contradictory to what Kátyáyana says, viz., "According to her pleasure, even in immoveables."[3]

6. Kátyáyana cited in the Kalpataru and Ratnákara declares: "She who is malicious, or shameless, or dissipator of wealth or adulterous is not entitled to woman's property."[4]

7. Yájñavalkya says: "A husband is not, if unwilling, bound to make good the property taken by him at a time of famine, or for the performance of a religious ceremony, or during illness or while under restraint."[5] "Restraint" is, when the creditor and the like (forcibly) obstruct the preparation of food.

8. But (if taken) in any other circumstance, the following rule propounded by Kátyáyana is to be followed: "Neither the husband, nor the son, nor the father, nor the brothers are entitled to the appropriation or disposal of woman's property."[6]

CHAPTER X.

Succession to Woman's Property.

1. In the next place, succession to woman's property is explained. On this Devala says: "A woman's property is common to her sons and maiden daughters, when she is dead; but if she leave no issue, her husband shall take it, her mother, her brother or her father."[7]

2. Here equal right of sons and maiden daughters is indicated by the conjunctive compound ("sons and maiden daughters").

3. In default of the one, the property goes to the other.

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[1] II. Cole. Dig., 594, CCCCLXXV.
[2] Nárada, I. 28.
[3] II. Cole. Dig., 594, CCCCLXXV.
[4] II. Cole. Dig., 602, CCCCLXXXIV.
[5] Yájñavalkya, II. 147.
[6] II. Cole. Dig., 594, CCCCLXXXVIII.
[7] II. Cole. Dig., 603, CCCCLXXXVIII.

4. On failure of both of them, the succession devolves, with equal right, on the married daughter who has a son and on her who is likely to have one, for they are capable of conferring spiritual benefits on their mother through the instrumentality of their sons who can present funeral oblations to the manes of their maternal grandfather which are shared by the deceased. This is declared by Satatapa: "The mother partakes of whatever is, after the ceremony of sapiṇḍikarana, presented to the manes of the ancestors."[1]

5. So also Nárada says: "On failure of the son the daughter inherits: for she equally continues the lineage."[2]

6. Consequently, on default of daughters of this description, succession devolves on the son's son.

7. On his default the property goes to the daughter's son, since the daughter's son is, in the following text of Manu, declared to be similar to a son's son: "Also the son of a daughter delivers him in the next world like the son of a son;"[3] and since it is logically consistent: for the married daughter is debarred from inheritance by the son, therefore the son of the debarred daughter should be excluded by the son of the person who bars her claim.

8. On his default the son's grandson (succeeds), because he presents oblations which she (the deceased proprietor) partakes of.

9. On failure of these, the barren and the widowed daughters succeed to their mother's property; since they too are her children.

10. On their default, the property devolves on the husband.

11. This, however, does not refer to the property which was given by the parents; for to that the brother succeeds (in preference to the husband). To this effect is the following text of Vriddha Kátyáyana: "Immoveable property which has been given by the parents to their daughter, descends always to her brother, if she die without leaving issue."[4]

12. But to the property received by the mother at the time of her marriage, the maiden and the married daughters succeed notwithstanding the sons, by reason of the text of Vasishṭha which says: "Let the females share the nuptial presents of their mother."[5]

13. "A woman's separate property goes to her daughters, maiden and those not actually married."[6] From this text of Gautama, it follows that the nuptial presents descend first to the maiden, that is, unaffianced daughters; in their default to those daughters, that are affianced but not actually married: on failure of these they appertain to the married daughters implied by the term "and"; because it is first generally laid down, "A woman's

[1] II. Cole. Dig., 609, CCCCXCVI.
[2] Nárada, XIII. 50.
[3] Manu, IX. 139.
[4] II. Cole. Dig., 620, DXII.
[5] Vasishṭha, XVII. 46.
[6] Gautama, XXVIII. 24.

property goes to her daughters," but the concluding portion, namely, "maiden and those not actually married", is intended to shew the order of succession.

14. Manu clearly says: "Property given to the mother on her marriage (yautuka) is exclusively the share of her unmarried daughter."[1] Here the word "yautuka" is derived from the verb "yu", signifying "to unite": and the union of husband and wife arises from marriage, since this is indicated by the following sacred text (recited at the time of marriage): "What is thy heart, let that become mine, and what is my heart let that become thine." The reading "Yautaka" is equally correct. The latter is adopted by Váchaspatimisra and Rayamukuta.

15. The "time of marriage" means time, previous and posterior to the actual time of marriage. This is described in the treatise on marriage to begin from the sráddha for prosperity, and to end with the ceremony of prostrating before the husband.

16. As for the passage of Manu; "The wealth of a woman which has been in any manner given to her by her father, let the Bráhmiṇí daughter take: or let it belong to her offspring;"[2] since the text specifies "given by her father", the meaning must be that property which was given to her by her father, even at any other time than that of the nuptials, shall belong exclusively to her daughter: and the term "Bráhmiṇí" signifies any daughter. Or the text may signify that the Bráhmiṇí damsel being daughter of a contemporary wife, shall take the property of the Kshatriyá and other wives dying childless, which had been given to them by their fathers. The precept, however, which directs that the property of a childless woman shall go to her surviving husband, does not here take effect.

17. On default of these the son succeeds: since Manu says: "On failure of daughters, the inheritance goes to sons."[3]

18. Similarly, also, other texts declaring the succession of daughters previous to that of sons refer to this description of woman's property.

19. On failure of sons and the others a woman's nuptial presents go to the husband if the marriage ceremony was of any of the five forms beginning with the Bráhma: but if it was any of the three forms beginning with the Ásura, the property appertains to the mother and on her default to the father.

20. As is declared by Manu: "It is admitted that the property of a woman married by the ceremonies called Bráhma, Daiva, Árṣha, Gándharva and Prájápatya, shall go to her husband, if she die without issue. But her wealth given to her on marriage in the

[1] Manu, IX. 131.
[2] Manu, IX. 191.
[3] Not found.

form called Ásura or in either of the other two (Rákshasa and Paisácha) is ordained on her death without issue to become the property of her mother and father."[1]

21. Baudháyana declares the order of succession to the property of a maiden: "The wealth of a maiden, let the uterine brothers themselves take: on failure of them it shall belong to the mother: or if she be dead, to the father."[2]

22. Since order is expressed in this text, therefore in the previous text (§ 20) "the mother and father" succeed in the order in which they are read, but not jointly agreeably to the conjunctive compound.

23. Brihaspati says:—"The mother's sister, the wife of the maternal uncle, the wife of the paternal uncle, the father's sister, the mother-in-law and the wife of an elder brother are pronounced to be similar to the mother. If they have no issue of their body, nor son (of a rival wife) nor daughter's son, nor son of these persons, the sister's son and the rest shall take their property."[3]

24. Both sons and daughters are included by the term "issue of the body": by "son" is meant the son of a rival wife; for a passage of law declares: "If among all the wives of the husband, one brings forth a male child, Manu has declared them all, by means of that son, to be mothers of male issue."[4] Nor is the term "son" meant to be in apposition with "the issue of the body"; for it would be superfluous, and the sister's son or any other remote heir would have the right of succession, although a son of a contemporary wife be living: "son of these persons" comprise the son's son and the rival wife's son's son, but not the son of a daughter's son; since he does not present oblations to the manes of her husband, which she partakes of.

25. Here agreeably to what has been said before, the rival wife's son and grandson succeed after the daughter's son and the others. But it should not be asserted that they take on failure of the husband, father and the rest mentioned before; because the husband and the rest have no capacity to present oblations which are enjoyed by the deceased proprietor.

26. Therefore, on failure of these down to the grandson of the rival wife, who are indicated by the term "nor" in the phrase "nor son of these persons", also on failure of the relatives beginning with the husband and ending with the father, who are mentioned in the following text of Devala: "A woman's property, when she is dead becomes the common inheritance of the sons and the daughters: in default of children, let the husband, mother, brother or father, take,"[5] the succession to woman's property devolves on

[1] Manu, IX. 196 and 197.
[2] Not found.
[3] Brihaspati, XXV. 88 and 89.
[4] Manu, IX. 183.
[5] II. Cole. Dig., 603, CCCCLXXXIX.

the sister's son, the husband's sister's son, the husband's brother's son, the brother's son, the son in-law and the husband's younger brother, in preference to the father-in-law, the husband's elder brother and the like, since there is no other way of reconciling the texts.

27. On this subject, the following text of Manu, in the chapter on Inheritance, declares: "To three ancestors must libation of water be given at their obsequies; for three, is funeral oblation of food ordained; the fourth is the giver of oblations; but the fifth has no concern in them."[1] Yájñavalkya declares: "Among these the giver of oblations is the heir;"[2] and in the text of Brihaspati (§ 23) the sonship of the sister's son and the rest, is indicated by the passage, "are pronounced similar to the mother."

28. The only reason for setting out in the chapter on Inheritance, the capacity of presenting oblations, is to show that the preference as regards succession, depends on the capacity of conferring a greater amount of spiritual benefit on the deceased proprietor.

29. Satatapa ordains:—"A sister's son should present oblations to the manes of his maternal uncle: and a maternal uncle should perform the funeral obsequies of his sister's son; also oblations should be presented to the manes of the father-in-law, of the spiritual preceptor, of a friend and the maternal grandfather, likewise of the wives of these persons: this is a settled rule amongst those who are conversant with the Vedas."[3]

30. Agreeably to this text (and for the preceding reason) it must be admitted that the order of succession among those six (sister's son, &c.), regulated by the different degrees of benefit derived from their oblations; since the order indicated by the sense is of greater weight than the order of reading. Otherwise succession would devolve, last of all, on the younger brother of the husband contrary to the opinion and practice of venerable persons.

31. Therefore, first of all, the husband's younger brother succeeds to the property of his elder brother's wife because he is a sapiṇḍa, also because he presents oblations to her and her husband, as well as to those to whom her husband was bound to present.

32. On his default, the sons of the husband's younger and elder brothers succeed; because they are sapiṇḍas, and because they present oblations to her and her husband as well as to two generations of ancestors to whom her husband was bound to offer oblations.

33. On their default the succession devolves on the sister's son; because though he is not a sapiṇḍa, still he presents oblations to her and to her father and two ancestors, to whom her son would have performed sráddha.

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[1] Manu, IX. 186. [2] Yájñavalkya, II. 132.
[3] II. Cole. Dig., 626, DXV.

34. In his absence the husband's sister's son succeeds; because he presents oblations to the three ancestors of her husband, which her husband would have offered, and because he presents oblations to her and her husband. He is postponed to the sister's son; inasmuch as they respectively occupy the places of the husband and the son and the husband is inferior to the son, it is reasonable that their superiority and inferiority should be similarly determined.

35. On his default a woman's property goes to her brother's son, because he presents oblations to her, to her husband and to her three paternal ancestors to whom her son would have presented oblations.

36. On his default the son-in-law succeeds; because he presents oblations to her and to her husband.

37. The succession devolves in the above order: the passage, "sister's son, &c.", enumerates the heirs but not the order of succession.

38. On failure of these six, the father-in-law or the like succeeds, according to his proximity of sapiṇḍaship.

39. It must not be supposed that the text "mother's sister, &c.", (§ 23) is applicable when there is a failure of the sapiṇḍas: for in this enumeration of successors, the husband's younger brother, his son and the son of the husband's eldest brother are included, but the husband's father and eldest brother who are more proximate are omitted.

CHAPTER XI.

Succession to the Estate of one who leaves no Male issue.

1. In the next place are determined the heirs to the estate of one who leaves no male issue.

2. Yájñavalkya says:—"The wife and the daughters, also both parents, brothers likewise, and their sons, gentiles, cognates, and pupil, and a fellow-student: on failure of the first among these, the next in order is heir to the estate of one who departed for heaven, leaving no male issue. This rule extends to all classes."[1]

3. Likewise Vishṇu says:—"The wealth of him who leaves no male issue goes to his wife: on failure of her, it devolves on the daughters; if there be none, it belongs to the father; if he be dead, it appertains to the mother; on failure of her, it goes to the brothers; after them it descends to the brother's son; if none exist, it passes to the kinsmen; in their default, it devolves on relations; and for want of all those heirs, the property escheats to the king, excepting the wealth of a Bráhmin."[2]

[1] Yajñavalkya, II. 135 and 136. [2] Vishṇu, XVII. 4—13.

4. In the above text the term "male issue" indicates sons, grandsons and great-grandsons; because they equally present oblations at funeral obsequies.

5. Accordingly, in a text Baudhâyana, after mentioning sons, grandsons and great-grandsons, says, "Male issue of the body being left, the property must go to them."[1]

6. That text runs as follows:—"The paternal great-grandfather and grandfather, the father, the man himself, his brothers of the whole blood, his son by a woman of the same caste, his grandson and his great-grandson: all these partaking of undivided oblations are pronounced sapiṇḍas. Those who share divided oblations are called sakulyas. Male issue of the body being left, the property must go to them. On failure of sapiṇḍas or near kindred, sakulyas or remote kinsmen are heirs."[2]

7. The meaning of the passage is this:—Since a person (when deceased) partakes of the funeral oblations presented to the three ancestors beginning with the father, as participating in the offerings at obsequies; and since the three descendants present oblations to the deceased; and since he, who, while living, presents an oblation to an ancestor, partakes while deceased, of oblations presented to the same person, as participating in the offering at obsequies: therefore the middlemost (of the seven) who while living offered food to the manes of ancestors, and when dead, partook of offerings made to them, becomes the object to which the oblations of his descendants were addressed in their lifetime, and shares with them, when they are deceased, the food which must be offered by the daughter's son and the like. Hence, those ancestors, to whom he presented oblations, and those descendants who present oblations to him, partake of an undivided offering in the form of (*pinda*) food at obsequies. Persons, who do partake of such offerings are sapiṇḍas. But one distant in the fifth degree neither gives an oblation to the fifth in ascent nor shares the offerings presented to his manes. So, the fifth in descent neither gives an oblation to the middle person who is distant from him in the fifth degree, nor partakes of offerings made to him. Therefore three ancestors from the grandfather's grandfather upwards, and three descendants from the grandson's grandson downwards, are denominated sakulyas, as partaking of divided oblations, inasmuch as they do not participate in the same offerings.

8. It has been before observed, that this relationship of sapiṇḍas (extending no further than the fourth degree) as well as that of sakulyas, is propounded relatively to inheritance. But relatively to mourning, marriage and the like, those too, that partake of the remnants of oblations, are denominated sapiṇḍas. This has been explained in the Suddhitattva.

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[1] Baudhâyana, I. 5, 11. 11.

[2] Baudhâyana, I, 5, 11. 9—12.

9. Kátyáyana, cited in the Ratnákara, clearly states the order of succession of the son and the like: "If an undivided son dies, his son should be made a sharer of the inheritance. He, who has not received livelihood from his grandfather, shall take his paternal share from his uncle or his son. But only the same share of property belongs to all the brothers (descended from the son). Likewise also his (grandson's) son shall take. Succession devolves not on a more remote descendant."[1]

10. The meaning of the passage is:—If any one of the brothers ceases to live, then his share should be allotted to his son. If the deceased leaves more sons than one, then his share should be equally distributed to them. Likewise his (grandson's) son shall take. His (great-grandson's) son's share ceases.

11. This, however, relates to a case in which the sharers dwell together. As Devala declares: "The rule is, that the re-distribution of inheritance among unseparated or separated kinsmen who dwell together takes place down to the fourth descendants."[2] The re-distribution, taking place among separated brothers who dwell together or are reunited extends as in the case of unseparated ones to the brother or his son or grandson, but excludes the great-grandson who is the fourth in descent.

12. The allotment of shares to those who are even seventh in descent as has been said before, (however,) relates to those that return from a distant place (ch. VII). Consequently no contradiction is incurred.

13. Therefore on failure of descendants down to the great-grandson the widow succeeds to the estate (left by her husband).

14. As is declared by Kátyáyana: "The wife may, after the death of her husband, use the estate of her husband according to her pleasure: but shall, while he is alive, preserve it or entrust it to his family. The sonless (widow) keeping unsullied the bed of her husband and persevering in religious observances, shall with moderation enjoy (the property of her husband). After her, his kinsmen shall take."[3] "According to her pleasure", intends for the purposes of religion.

15. Likewise Vyása ordains: "O sweet-faced! a woman, who is always assiduous in the peformance of religious observances, conveys (to a region of everlasting bliss) both herself and her husband abiding in another world."[4]

16. A text of law cited in the Madanapárijáta is as follows: "Whatever is most desirable in the world, and whatever was most liked by the husband should be bestowed on a meritorious man, by a woman desirous of gratifying her (deceased) husband."[5]

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[1] II. Cole. Dig., 241, LXXIX.
[2] *Ibid* 242, LXXXI.
[3] Cole. Dig., 595, CCCCLXXVII.
[4] *Ibid*, 528, CCCC.
[5] Cole. Dig., 528, CCCCI.

17. "Keeping unsullied the bed of her husband" intends, one who casually knows no other man than the husband. Accordingly, in that part of the Harivamsa, which treats of religious observances, it is said: "O auspicious Arundhati! of unchaste women, all good acts consisting of gift, fasting and merits, likewise all religious observances are fruitless."

18. Also Brihat Manu says: "Let the sonless wife, keeping unsullied the bed of her husband and persevering in religious observances, offer his oblations and take (his) entire share."[1] The term 'his' which occurs in the phrase "his oblations", is to be construed also with 'share'; and since the term 'his' denotes the husband, therefore the wife takes the entire share, *i.e.*, the whole estate appertaining to the husband, and not so much as is sufficient for subsistence.

19. By the term 'wife' (patni) is intended, the wife of the same class with the husband; since it is expressed (in several texts) that "the senior wife (takes the wealth)".

20. The seniority is described by Manu:—"When regenerate men take wives both of their own class and others, the seniority, honor and apartment of those wives must be settled according to the order of their classes."[2]

21. Nárada ordains mere maintenance of wives other than those of the same class:—"Of the brothers, if any one departs without issue, or enters into a religious order, let the rest divide his wealth excepting the wives' separate property. Let them allow a maintenance to his wives (*stri*) for life, provided these preserve unsullied the bed of their lord. But if they behave otherwise, the brothers may resume that allowance."[3] 'Departs' means, dies.

22. Thus, as there is a distinction between a wife taken from the same class and one who is not so, texts like the following should be interpreted with reference to this distinction:—"Next let brothers of the whole blood or also equal daughters divide the heritage of him who leaves no male issue; or let the existing father or brothers belonging to the same class, or the mother, or the wife inherit in their order; but on failure of those, the nearest of the kinsmen succeeds."[4] 'Equal' means, appertaining to the same class: 'Existing' signifies, surviving.

23. In fact, however, the order mentioned in this text is not to be accepted in all cases; since that would be inconsistent with the text cited below, which bases the order of succession on the degree of spiritual benefits, conferred upon the deceased proprietor. Hence it is that the terms 'or' and 'or also' are repeated in the text, on purpose to show that no importance is to be attached to the order.

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[1] II. Cole. Dig., 535, CCCCVIII.
[2] Manu, IX. 85.
[3] Nárada, XIII. 25 and 26.
[4] II. Cole. Dig., 532, CCCCIII.

24. On failure of the wife (patni) the daughters (succeed). Here by the plural number (§ 2) are included the maiden and the married daughters, also the daughter's son.

25. Now the order of succession among the maiden and the married daughters is indicated by the following text of Parásara: "Let the maiden daughter of one who dies without leaving male issue take the inheritance; on failure of her, the married one."[1]

26. In default of these, the daughters' son (inherits). Because in a text of Manu, namely, "Between a son's son and a daughter's son there is no difference in law; since their father and mother both sprang from the body of the same man",[2] the daughter's son, is declared to be equivalent to the son's son, consequently as the son's son succeeds on failure of the sons, so the daughter's son inherits in default of the daughters.

27. Accordingly, Vishṇu cited by Govindarája, says: "In a family destitute of the sons and the grandsons, the daughter's sons inherit the estate; for the son's son and the daughter's son are alike in the performance of obsequies of the ancestors."[3]

28. If there be no daughter's son, the parents (succeed). Of these, first, the father, and then the mother succeeds agreeably to the text of Vishṇu cited before (§ 3).

29. In their absence, the brothers (succeed). Here, too, the plural number is used (§ 2) for the purpose of showing that the succession is different according as the brothers are uterine, consanguine and reunited.

30. Hence, of a uterine brother and one born of the step-mother, though they are sprung from the same father, the uterine brother alone succeeds, but not the step-brother; because the former presents oblations to six ancestors which the deceased was bound to offer: but the latter offers oblations to the three paternal ancestors only.

31. According to the opinion of some, however, even a step-brother who is reunited equally succeeds to a brother's property, with a uterine brother. But if a uterine brother be reunited, he alone takes, and not a step-brother though reunited.[4]

32. On this subject Yájñavalkya says:—"1. A reunited brother shall keep the share of his reunited co-heir who is deceased; or shall deliver it to his issue. But a uterine brother shall thus retain or deliver the allotment of his uterine brother. 2. A half-brother, however, being again associated may take the heritage; not a half-brother (who is not reunited): or (a uterine brother) though not associated may obtain the property, and not the son of a different mother, who is reunited."

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[1] II. Cole. Dig., 542, CCCCXVIII.
[2] Manu, IX. 133.
[3] Vishṇu, XV. 47.
[4] Yájñavalkya, II. 138 and 139.

33. Brihaspati describes a reunited (kinsman):—"He who being separated dwells again through affection, with the father, brother or uncle, is called reunited."[1]

34. Therefore, reunion is the dwelling together through friendship, after separation, of the father and the son, or of the brothers, or of the uncle and the brother's son, as the case may be. One forming reunion is called reunited.

35. When a person, who is thus reunited, dies, his reunited co-heir should allot his share to his issue: on failure of his issue, he shall take it himself (§ 32).

36. The passage, "But a uterine brother shall thus retain or deliver the allotment of his uterine brother," (§ 32) is to be explained in the same way.

37. On this, a special rule is propounded by Yama: "Undivided immoveable property goes to all (the brothers). But never should separated immoveable estate be taken by half-brothers."[2] 'All', that is, all the whole and half-brothers. The inference which is deduced from the sense of this text is, that exclusive of immoveable property, everything whether divided or undivided, appertains to the uterine brother alone.

38. Manu clearly says: "Of these (reunited brothers) if the eldest or the youngest or any other be deprived (of his share, previous to the allotment of shares, or dies, his share is not cancelled"). "Previous to the allotment of shares", means, previous to partition[3] be deprived of his share, *i.e.*, by entering into a religious order, and the like.

39. As to who are entitled to that share, the same lawgiver says: "The assembled uterine brothers shall together equally divide the same (share); also brothers who are reunited and sisters born of the same mother."[4]

40. Brihaspati says:—"When separated brothers dwell together through affection, then among these there is no seniority when re-distribution takes place; should any co-heir enter into any religious order or die, his share is not cancelled, but is to be allotted to his uterine brother: if there be any sister she is entitled to a share of it. This is the law (regulating the succession to the property) of one without issue and having neither wife nor father (surviving him.) But if any one of the reunited brothers acquires property by means of science, heroism and the like; two shares should be allotted to him and the rest shall take equal shares."[5]

41. Here, it is to be understood, that the absence of the specific deduction for the eldest among the reunited brothers, refers to the three higher castes, but as regards the Súdrás the absence is absolute.

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[1] Brihaspati, XXV. 72.
[2] Cole. Dig., 559. CCCXXI.
[3] Manu, IX. 211.
[4] *Ibid*, IX. 212.
[5] Brihaspati, XXV. 76 and 77.

42. This is declared also by Manu:—"All the sons of the twice-born who are sprung from mothers of the same class, shall, after setting apart the specific deduction for the eldest, divide equally. But a woman of the same class only and not of a different class may become the wife of a Súdrá. Those that are born of her become equal sharers, although there may be a hundred sons."[1]

43. Kullúkabhatta comments on the term 'equal sharers' in the following way: become only equal participators, *i.e.*, shall not allow the deductions for seniority to any one.

44. This is also consonant with reason; since as in the text, "To the eldest is to be allotted the twentieth part, and the best of all chattels, half of that to the middlemost, but a fourth to the youngest,"[2] Manu has generally declared the law of deductions, therefore the second half of the latter of the two couplets (§ 42) is declared in order to remove doubts as to whether the term 'twice-born' indicates all the castes (or stands for what it literally signifies).

45. Nor can it be argued that the specific deductions hold good even in the case of Súdrás inasmuch as the reason, namely, saving from the infernal region of the name of *put*, is the same in all cases; because that is not the reason, since specific deductions of the half and the fourth (of what is allotted to the eldest) are declared to be given respectively to the middle one and the youngest, though it cannot be held that they save from the same.

46. Nor can it be argued that as there is a distinction between the specific deductions and the shares, all that is prohibited by the declaration of equal participation, is not the specific deduction, but the unequal distribution, among the Súdrás, which has been mentioned before, as taking place among those born of mothers of different castes; because that object would be accomplished by the first half of the last couplet which says: "But a woman of the same class only, &c.,", (§ 42).

47. Equal participation is ordained by Manu for the purpose of prohibiting specific deductions even amongst the twice-born; for he says, after the text, 'All the sons of the twice-born, &c.' (§ 2): "But twofold distribution among co-heirs is pronounced: one is in the order of seniority, and the other an equal participation."[3] Brihaspati reads "is shown" in lieu of "is pronounced".

48. Here (§ 41) (it is to be understood that) the right of the sister extends to so much property as is sufficient for her marriage, because it is so declared by the sages as well as the commentators.

49. By reason of the unilateral (Ekasesha) compound the term father in the passage "having neither wife nor father surviving

[1] Manu, IX. 156 and 157. [2] Manu, IX. 111.
[3] Brihaspati, XXV. 7.

him," (§ 41) indicates both the father and the mother. Because Vishṇu (§ 3) and other sages declare the succession of the brother, only on failure of the mother.

50. Now Jímútaváhana says:—The text "a reunited (brother) shall keep the share of his reunited co-heir" (§ 32) is intended to provide a special rule governed by the circumstance of reunion after separation and applicable to the case where a number of claimants in an equal degree of affinity occurs. Hence, if there be competition between claimants of equal degree, whether brothers of the whole blood, or brothers of the half-blood, or sons of such brothers, or uncles or the like, the reunited parcener shall take the heritage: for the text does not specify the particular relation; and all (these relations) were premised in the preceding text (§ 2); and a question arises in regard to all of them. Therefore the text must be considered as not relating exclusively to brothers.

51. But when there are a half-brother reunited, and a uterine brother not reunited, and when there are a whole brother and a half-brother both reunited; then two questions arise, which of the two is to succeed in each case.

52. As to the first it is said, "A half-brother, however, &c.," (§ 32) which signifies; let a half-brother, if reunited, take, but not a half-brother merely as such: but a uterine brother though not reunited may take; for the term 'uterine brother' which occurs in the preceding text is also to be construed with this latter proposition. Therefore when there are an unassociated uterine brother and a reunited half-brother, they both succeed; because the equality, of the relation of reunion, and of the status of a whole brother is expressed by the first part of the text (§ 32).

53. As to the second, it is ordained "and not the son of a different mother, who is reunited." (§ 32). The meaning is that when there is a whole brother reunited, the son of a different mother though reunited shall not take, *that is*, the reunited whole brother alone shall succeed; since though they are equally reunited, still the whole brother as such is preferred.

54. The author of the Dáyabhága, however, construes the second couplet of Yájñavalkya (§ 42) in the following way: "The meaning of the first half (of that couplet) is, a half-brother being reunited shall take the succession, although a whole brother not reunited exists; but a half-brother who is not reunited shall not inherit. The latter half of the text is in answer to the question: does not the whole brother inherit in that case? Though not reunited, the whole brother (the term is understood) shall take the heritage, and not the son of a different mother who is again associated exclusively; but it shall be taken and shared by both."

55. The same construction is put upon the passage in the Mitákshará.

56. But the great Doctor Súlapani in his Yájñavalkya-dípakálika reads the passage thus: "But a half-brother, being again associated, shall not take the heritage of a half-brother;" and offers the following explanatory comments:—A uterine brother though not reunited, shall alone take the heritage, but not a brother born of a rival mother, though reunited. Some explain the term 'associated' (occurring in the last part of Yájñavalkya's text, § 32,) to mean one associated through the uterus that is, a whole brother. If the reading be, "one born of a different mother shall not take the heritage", then the meaning would be, that one being a half-brother shall not take the succession. This text shows the succession of a whole brother who is not reunited. Consequently, there is no tautology.

57. The authors of the Ratnákara and others say that the reading which is found in the Kalpataru is "shall not take the heritage of a half-brother", but this seems to be an error committed by the copyist. Since the reading in the original text of Yájñavalkya and in such treatises as the Mitákshará, the Párijáta and the Haláyudha, is "A half-brother shall not take the heritage;" and the commentaries on that text are in accordance with this reading.

58. If there be no brothers, the brother's son succeeds. But first of all, the son of a whole brother takes the succession, because the property being devolved on him, conduces to greater (spiritual) benefit; inasmuch as the mother of the (deceased) proprietor partakes of the oblations which the whole brother's son presents to his grandfather. As is declared by Brihaspati: "The mother tastes with her husband the oblation consisting of food which is reverentially offered (to his manes), and the grandmother with her husband, as also the great-grandmother with her husband."[1]

59. In default of the son of a uterine brother, the son of a half-brother succeeds.

60. On failure of him, the 'gentiles' succeed (§ 2).

61. For Manu declares: "To three must libations of water be made, to three must oblations of food be presented; the fourth in descent is the giver of these offerings; but the fifth has no concern in them. The inheritance is his who is unremote of kinsmen of him."[2] The gloss of Kullukabhatta on the latter part is to the following effect: The inheritance is his who is unremote, *i.e.*, nearest, 'of the kinsmen', *i.e.*, from among the kinsmen 'of him', *i.e.*, of the deceased proprietor.

62. Also because Brihaspati says: "When there are many gentiles, distant kinsmen as well as cognates, he who among these is the nearest, succeeds to the estate of one who leaves no children."[3]

63. Therefore a successor to the inheritance is to be determined

[1] II. Cole. Dig., 561, CCCCXXXII. [2] Manu, IX. 186 and 187.
[3] Brihaspati, XXV. 62.

with reference to two considerations, namely, his relation as regards the offering of oblations, and his proximity of birth.

64. Accordingly, as on failure of the deceased proprietor's lineage including the daughter's son, others succeed, similarly, in default of the brother's son, the father's lineage ending with his daughter's son takes the heritage.

65. In their default the grandfather succeeds.

66. On failure of him, the grandmother inherits. Since Manu ordains: "The mother receives the inheritance of her son destitute of issue; and when the mother too is dead, the father's mother takes the property." Therefore as the mother succeeds on failure of the father, similarly the paternal grandmother is the heir in default of the paternal grandfather.

67. When she is no more, the descendants of the paternal grandfather inclusive of his daughter's son, succeeds (in the same order), as has been shewn with regard to the father's issue.

68. On the same principle, the paternal great-grandfather, the paternal great-grandmother, and the descendants of the paternal great-grandfather inclusive of his daughter's son (succeed in the prescribed order).

69. On failure of all those who present oblations, partaken of, by the deceased (proprietor,) the 'cognates', such as the maternal grandfather, the maternal uncle and the like,—(are entitled to the inheritance).

70. Among these too, if the maternal grandfather survive, he alone succeeds in the same way as the father and the like.

71. If he be dead, then the maternal uncle and the like become heirs, since they present oblations to the maternal grandfather and the like, which the deceased (proprietor) was bound to offer.

72. On their default the 'sakulyas' or the kinsmen of divided oblations become heirs. They consist of the three generations of descendants, beginning with the great-grandson's son, and also of the descendants of the paternal great-grandfather's father and the like.

73. It is in pursuance of the same principle (§ 63) that the author of the Dáyabhága says: "Since the paternal uncle, like the son of the whole brother, offers oblations, which the owner was bound to present to two ancestors, should not the succession devolve equally on the paternal uncle and the nephew of the proprietor? The answer is, the paternal uncle is indeed the giver of oblations to the paternal grandfather and great-grandfather of the proprietor; but the nephew is the giver of oblations to two ancestors including the owner's father who is principally considered. He is therefore a preferable claimant, and inherits before the paternal uncle."

74. Likewise when there is a paternal uncle, and a son of a deceased paternal uncle, of the deceased; in such a case although

there is no distinction as to the presenting of oblations, which the deceased was bound to offer, to the paternal grandfather and great-grandfather, still the paternal uncle inherits by reason of his proximity of birth.

75. Because the allotment of shares according to the proximity of birth is set forth in the following text: "Among the sons of different fathers, the allotment of shares is according to the fathers."

76. Accordingly, it is said in the Mitákshará that the paternal grandfather, the paternal uncle and his son, take the succession in their order.

77. Also in Vivádachintámaṇi it is stated regarding succession to the property of one who leaves no male issue, that on default of the brother, his son (succeeds), on failure of him the nearest kinsman (inherits).

78. The term 'cognates' in the text of Brihaspati (§ 62) shows that the cognates of the owner, his father and his mother are, in the prescribed order, entitled to inheritance. They are:—"The father's sister's son, the mother's sister's son, and the maternal uncle's son are considered to be the cognates of the owner. The father's father's sister's son, the father's mother's sister's son and the father's maternal uncle's son, are known as the cognates of the father. And the mother's cognates are her mother's sister's son, her father's sister's son and her maternal uncle's son."

79. Ápastamba says: "Either the disciples or the daughter shall use the property for religious acts in his welfare." 'For religious acts in his welfare', signifies, for religious acts such as the monthly oblations and the like which are enjoyed by him, that is to say, for his spiritual benefit.

80. Thus also when there is a possibility of the destruction of his property, although there may be heirs to his property in distant places, still any one may apply the property of the deceased to the purpose of his funeral obsequies as well as to the purpose of his religious merit.

81. Because in the following text of Nárada, it is said that even a priest may become a substitute (of the heir). "Even he who out of affection, acts, of his own accord, as a priest." This is explained at length in the Suddhitattwa.

82. This is admitted by the author of the Dáyabhága when he says: "The appropriation of the wealth of the deceased to his spiritual benefit, in the mode which has been stated, should be in every case, contemplated."

83. Thus in the Principles of Law composed by the fortunate Raghunandana Bhattacharjya, the son of the great Doctor the fortunate Harihara Bhattacharjya, the Principles of Heritage is finished.

MADANA PÁRIJÁTA.

Partition of heritage.

As divided coparceners only are entitled to perform *srâddha* separately, partition of heritage is described after the chapter on *Srâddha*.

Here Nárada says:—"That department of law which treats of the division of the paternal wealth by the sons is called by the wise *Dáyabhága* or partition of heritage."[1] *Commentary*:—The word *paternal* is illustratively used of the grandfather, etc. The word *tat* is an adjective qualifying the noun through the verb.

There are four periods for partition. One is when even though the father be alive he desires partition. Another period is when the sons desire it though the father be unwilling, provided the mother is past menstruation and the father does not like the face of women and is not desirous of wealth. Another is when the sons desire it and the father is old, addicted to vice and afflicted with incurable diseases, though the mother is not past menstruation and the father is unwilling. The other is when the father is dead. Of these Yájñavalkya states the first case thus: "If the father makes a partition, he may divide his sons according to his pleasure. He may give the eldest the best share or make all equal sharers."[2]

And the allotment of shares to the eldest, &c., is thus shewn by Manu:—"The deduction in favor of the eldest is a twentieth part and the most excellent chattel of all; a half of that to the middlemost and a fourth of that to the youngest."[3] *Commentary*:—The meaning of this text is:—A twentieth part of the partible wealth and what is most excellent of all the partible chattels should be given to the eldest. A fortieth part and one middling chattel to the middlemost and an eightieth part and the worst of all the chattels to the youngest. They should equally divide and take the wealth that is left after these deductions are made. There are many other similar texts of Gautama and others laying down an unequal division. They are not quoted here for fear of swelling the book. Though unequal division is thus established by the Sastras, still as it is abhorred by the world, this mode of division is not enjoined to be practised on account of the text which says: "That which does not lead to heaven and is abhorred by the world, one should not practise though

[1] Nárada, XIII. 1

[2] Yájñavalkya, II. 114.

[3] Manu, IX. III.

it is a virtue."[1] The Smriti says :—"Just as the practice of Niyoga and the slaying of a barren cow are not now allowed, so partition with deductions is not now found."[2]

If, however, the father by chance makes an unequal partition it does not become void ; so says Yájñavalkya :—"A legal distribution made by the father among sons separated with greater or less shares is pronounced valid."[3] *Commentary*:—If legal, *i.e.*, not divorced from law, then it cannot be annulled. This is the meaning. It is in effect said that if it is illegal, it becomes void.

Accordingly Nárada also says :—"A father who acts contrary to law has no power in the distribution of wealth."[4]

But where there is no abhorrence of the world to an unequal division, there unequal division certainly takes place as Nárada says : "A father making a partition may take two shares for himself."[5] *Commentary* :—This also applies to the person making a self-acquisition.

So Vasishtha says :—"But he among them who acquires wealth himself shall take only two shares."[6] Among them, *i.e.*, among those entitled to share, the paternal uncles, &c.

Nárada after saying "They shall divide the wealth equally," states the second case thus : "When the mother's menstruation has ceased and the sisters have been married and when the father has turned away from sexual enjoyment and his desires have ceased".[7] *Commentary* :—*Prattásu*] married. *Ramanam*] sexual enjoyment. The meaning is "when his desire for sexual enjoyment has ceased" ; desires] regarding wealth. Sankha states the third case thus :—"When the father is unwilling, partition may take place if he be old, perverse in mind and afflicted with disease."[8] *Commentary* :—Perverse in mind] addicted to vice. Yájñavalkya states the fourth case thus :—"After the parents let the sons divide the wealth and the debts equally."[9] *Commentary* :—After parents] after (the death of) the father and mother. The wealth, &c.,] The meaning is that they shall divide the paternal wealth and debts equally.

The same author states a distinction when the sons themselves make a partition after the father's death or during his life when he is subject to the taint of degradation, &c. "The uninitiated must be initiated by those already initiated, as also the sisters by giving them a fourth part of their own shares."[10] The meaning is that partition should be made after initiating uninitiated brothers and sisters, *i.e.*, performing their sacraments up to marriage inclusive. The meaning of "as also, &c.," is that the unmarried sisters should be

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[1] Anonymous.
[2] Anonymous.
[3] Yájñavalkya, II. 116.
[4] Nárada, XIII. 16.
[5] *Ibid*, XIII. 12.
[6] Vasishtha, XVII. 51.
[7] Nárada, XIII. 3.
[8] Not found.
[9] Yájñavalkya, II. 117.
[10] *Ibid*, II. 124.

married and should be given a fourth share of their own respective shares. By "their shares" is meant "the shares which the sons of the various castes would be entitled to, under the subsequent text 'they shall have three, two and one shares, etc'." The following is the mode of division :—A Bráhmin has one wife, a son and a daughter by her. Here the father's wealth should be divided into two shares, and one of these shares should be divided into four parts. After giving the daughter a fourth part, the son shall take the rest. When there are two sons and one daughter, then, the father's wealth should be divided into three shares, and one of these shares should be divided into four shares. Having given a fourth share to the daughter, the sons shall equally divide and take the rest. The same should be inferred when there are more than two sons and two daughters. If there be one son and two daughters, then the father's wealth should be divided into three shares. One of these shares should be divided into four parts. Having given each of the daughters a fourth part, the son shall take all the rest. This should be the rule of division adopted where there are sisters and brothers of the same caste unequal in number. The following rule should be applied where there are brothers and sisters of different castes equal or unequal in number. Thus when a Bráhmin has wives of all the castes, Bráhmin, &c., and his Bráhmiṇí, Kshatriyá, Vaisyá and Súdrá wives have each a son and daughter and where the Bráhmin has thus eight children, four male and four female, then the issue of the Bráhmiṇí wife take eight shares, the issue of the Kshatriyá wife six shares, the issue of the Vaisyá wife four shares and the issue of the Súdrá two shares. Thus having divided the whole wealth into twenty shares the daughter of the Bráhmiṇí should be given a fourth part of the four shares which represent the share of a son of her caste. To the daughter of the Kshatriyá should be given a fourth part of the three shares which represent the share of a son of her caste. To the daughter of the Vaisyá should be given a fourth part of the two shares which represent the share of a son of her caste. To the daughter of the Súdrá wife should be given a fourth part of the one share which represents the share of a son of her caste. Having thus given, the sons of the Bráhmiṇí, the Kshatriyá, the Vaisyá and the Súdrá wives should put together the rest of the wealth and divide and take it in four, three, two and one shares respectively. Where the brothers and sisters are unequal in number, then having divided the whole wealth into as many shares as there are brothers and sisters according to the rule "they shall take four, three, two and one shares respectively," the sisters should be given a fourth part of the share due to a son of their caste. Having so given, the remaining shares should be put together and should be divided among the sons in four, three, two and one shares respectively. The rule should thus be understood. Some, however, think thus: Having given the maiden daughters a fourth share according to the rule above laid down, their marriage must be performed with such wealth alone. It is not that they should be married out of the

common wealth and that they should be subsequently given a fourth share. This opinion should be rejected as Medhátithi, the author of the Mitákshará, and others do not incline to that view. Or the question may be determined with reference to the practice in different countries. The periods of partition and what arise in that connexion, these both have been described. Now primary and secondary sons are described in order to show the rule of succession to the heritage.

On this point Yájñavalkya says:—"The legitimate son (aurasa) is one procreated on the lawful wedded wife. Equal to him is the son of an appointed daughter; the son of the wife is one begotten on the wife by a kinsman of her husband or by some other. One secretly produced in the house is the son of hidden origin. A damsel's child is one born of an unmarried woman. He is considered as son of his maternal grandsire. A child begotten on a woman whose first marriage has not been consummated or on one who had been deflowered before marriage is called the son of a twice-married woman. He whom his father or his mother gives for adoption shall be considered as the son given. The son bought is one who was sold by his father and mother. The son made is one adopted by the man himself. One who gives himself is self-given. The child accepted while yet in the womb is one secured with a bride. He who is taken for adoption having been forsaken by his parents is a deserted son. Of these the next in order in the absence of all the preceding is heir and giver of the pinda. This rule is stated in respect of sons equal in caste."[1]

Commentary:—The virtuous wife is one belonging to the same caste and married in legal form. The son born of her is the aurasa. He is primary. So also the son begotten on a wife of the same caste married in the Ásura and the succeeding forms, so the Múrdhávasikta, Ambashtha, and the Párasava the same as Nisháda, sons begotten by a Bráhmin on his wives in the order of castes, such as the Kshatriyá, &c., the Máhishya and Ugra, sons begotten by a Kshatriyá on wives of the Vaisyá and Súdrá castes, the Karana son begotten by a Vaisyá on a Súdrá wife, all these are certainly *aurasas*. *Putrikásutah*] either the appointed daughter herself regarded as a son or the son of the appointed daughter. Either way the *Putrikásuta* is equal to him *i.e.*, the *aurasa*. So the *Dvyámushyáyana* (the son of two fathers) is the *aurasa* son of his procreator. The *Kshetraja* (son of the wife) is one begotten on the wife under the Niyoga rules by one of the same caste or *gotra*, a sapinda or her husband's younger brother. The *Gúdhaja* or son of hidden origin is one begotten in secret on a woman by some unascertained person of the same caste in her husband's house. By some unascertained person]; this is from the standpoint of the husband, not of the wife. The knowledge of the person belonging to the same caste is possible because the fact of it is known through

[1] Yájñavalkya, II, 128—131.

the wife. Where owing to sexual intercourse with a man under compulsion or in secret even she does not know his caste, the son born of it bears only the name of *Gúdhaja* but does not attain the status of the *Gúdhaja* previously described. The son begotten on a maiden by a man of the same caste is called the damsel's son. He is the son of his maternal grandsire if she is unmarried and stays under her father's roof. If she has been married, the son then belongs to her husband.

Accordingly, Manu says:—"That son whom a maiden in her father's home begets in secret, let one call him the damsel's son by name, belonging to the damsel's husband."[1] *Commentary*:—Because the word *husband* is used, it should be understood that the son belongs to the husband if she has been married and to the maternal grandsire if otherwise. The twice-married woman is of two sorts—the virgin and the deflowered. One begotten on her by a man of the same caste is called *Paunarbhava*. The *Dattaka* is also of the same caste; for Manu says: "He whom his father or mother gives during distress and with water, being of the same caste and affectionately disposed should be known as the son given."[2] *Sadrisam*] of the same caste. The mother has power to give only in distress when the husband is dead or is absent. Similarly, the father has power only in distress when the mother is dead or is subject to lunacy, &c. Or, both have power only when acting together. As the expression "in distress" is used, it is inferred that in the absence of distress, the son should not be given. If given in the absence of distress, sin attaches to the giver and not to the receiver.

An only son should not be given or taken. So Vasishtha says:—"But let not one give or take an only son."[3]

Similarly, the eldest son also should not be given.

Vasishtha thus lays down the manner of taking a son: "One desirous to adopt a son, should convene his kindred, inform the king, perform the *homa* with *vyáhritis*, in the middle of his dwelling, and shall only take one whose relatives are not far off and who is nearest among his relatives."[4] *Nivésanasya*] of his dwelling. The expression "whose relatives are not far off" is used for the purpose of prohibiting the taking of one who is very much removed by country and language. This rule should be applied *mutatis mutandis* to the son bought, to the son self-given and to the son made. The son bought is one of the same caste not being an only or the eldest son sold in distress by his father and mother together, as previously laid down, or by either of them. As for what has been stated by Manu: "He is the son bought whether equal or unequal to him,"[5] that is intended to mean equal or unequal by good qualities and not by caste, such as Bráhmin, &c. The son made is one who is taken for

[1] Manu, IX. 170.
[2] *Ibid*, IX. 168.
[3] Vasishtha, XV. 3.
[4] *Ibid*, XV. 6.
[5] Manu, IX. 174.

a son by one anxious to have a son, he being devoid of parents and induced to become his son by show of wealth, &c. The son self-given is one who being either devoid of parents or forsaken by them seeks one and exclaims: "I shall become thy son." Here also he must be of the same caste. The son received with a pregnant bride is one born of the pregnancy of a woman married while pregnant, if the pregnancy was due to a male of the same caste. One who being forsaken by his father and mother is taken for a son by a person of the same caste is called a deserted son. Here the author shows the order of succession by the following portion of the text: "He is the giver of the pinda and taker of the wealth, &c." The author next says that this applies to sons of the same caste (with the father) by the following portion of the text: "This rule has been stated by me in respect of sons of equal caste." Though the sons of the wife, &c., may have been begotten by males of a superior caste, still they retain their appropriate name; but do not attain to the rank of sons begotten by males of the same caste, because the clause: "This has been stated in respect of sons of equal caste" has a restrictive force. If begotten by men of inferior caste it should be distinctly understood that they are contemptible, being born in the inverse order (*Pratilomaja*). The damsel's son, the son of concealed birth, the son received with the pregnant bride, and the son of the twice-married woman are said to be of the same caste through their procreator's and not by their own nature; for, they being sons of an unchaste wife and a widow are themselves excluded from the pale of caste.

If after the making of an appointed daughter an *aurasa* son is born, then Manu states a distinction:—"If subsequent to the making of an appointed daughter a son is born, division in that case shall be equal; for women have no right of primogeniture."[1]

Kátyáyana says: "If an *aurasa* is born the other sons take a fourth share if of the same caste; but if of different caste they get only food and raiment."[2] Of equal caste] the son of the wife, the adopted son, the son bought, the son made, the son self-given, and the deserted son. Of different caste] the damsel's son, the son of concealed birth, the son received with the pregnant bride and the son of the twice-married woman.

As for the text of Vishṇu: "But the damsel's son, the son of concealed birth, the son received with the pregnant bride, the son of the twice-married woman, all these are contemptible and do never obtain a share of the father's wealth,"[3] that is intended to prohibit the taking of a fourth share by these where there is an *aurasa* son. In default of the *aurasa* son, &c., even the damsel's son, &c., certainly take the whole of the father's wealth according to the text:—"The next in order in default of the preceding." This is Vijñánesvara's

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[1] Manu, IX. 134.

[2] II, Cole. Dig., 348, CCXVIII.

[3] Not found.

view. This order of succession laid down by us here is also laid down in the Dáyabhága chapter of the Subodhini, a commentary on Vijñánesvara's work.

Regarding one who being entitled to a share does not wish to take it either from lack of avarice, &c., or from ability to earn for himself, Yájñavalkya says: "One who is able (to earn) and not desirous (for partition) should be separated by giving him some trifle."[1] Something, however valueless, should be given and partition should be made; and this is enjoined in order that his sons, &c., may not subsequently claim a partition.

In respect of the *Dvyámushyáyana* (the son of two fathers) the author lays down a special rule:—"The son, begotten under the Niyoga rules by a sonless man on the wife of another is legally the taker of the wealth of both and the giver of the pinda."[2] When the owner of the seed being himself sonless enters at the time of supplying the seed into the special contract 'the son born hereof shall belong to us both,'—it is only then that the son takes the wealth of the owners of both the seed and the soil. In the absence of a special contract, he takes the wealth only of the owner of the soil.

Regarding the son born subsequently to partition, Manu says:—"But the son born after partition takes only the paternal wealth."[3] The word *pitriyam* here is an *ekasesha* compound and hence means 'belonging to the father and the mother.' Accordingly, it is also said:—"What is acquired by the father himself after division with his sons, all that belongs to the son born after partition and the sons born before it are declared powerless over such wealth."[4] It is also said: "Or let him divide equally with those who may have been re-united with him (father)."[5] The meaning is, that the son born subsequent to partition shall share equally with others who after partition were re-united with the father.

On the question how share should be allotted by the other brothers to the son born subsequent to partition of the mother or the brother's widow whose pregnancy was not manifest at the time of the partition, Yájñavalkya says: "His share should be allotted out of the visible wealth corrected for income and expenditure."[6] '*Tadvibhága*'] his share. Here 'his' refers to the son born after partition in the manner previously stated. '*Drisyádvá*'; the particle '*va*' here is used for the purpose of emphasis and means, '*certainly*.' Of what visible wealth? Of the visible wealth corrected for income and expenditure. Income is gain derived from agriculture, &c., in respect of their shares obtained at the partition. Expenditure is what is incurred of necessity to discharge the father's debts, to maintain the family, &c. Having added the

[1] Yájñavalkya, II. 116.
[2] *Ibid*, II. 127.
[3] Manu, IX. 216.
[4] Brihaspati, XXV. 19.
[5] Manu, IX. 216.
[6] Yájñavalkya, II. 122.

share and income and subtracting from it the expenditure incurred, the brothers should each give out of his own wealth, portions in fair proportion, to the son born after partition so as to make his share equal to their own. This is the meaning. If the pregnancy of the mother or the brother's widow be manifest, partition should be made after their confinement. For Vasishṭha says:—"Now partition among brothers to await till childless women beget sons."[1] The meaning is, that partition should be made after confinement of childless women whose pregnancy is manifest.

When ornaments, &c., are given by the father or the mother after partition to the divided son, the son born after partition should not prohibit it. Accordingly, the holy sage says: "Whatever is given to any of the sons by the parents becomes his exclusive wealth."[2] Whatever is given by the parents to any of the sons before partition also becomes his exclusive wealth by parity of reasoning. Hence, when anything is given to one, none other should prohibit it.

Next, Partition among Sons unequal in Caste.

Here Yájñavalkya says:—"The sons of a Bráhmin in the order of castes shall take four, three, two and one shares; the sons of a Kshatriyá, three, two, and one shares; the sons of a Vaisyá two and one shares."[3] In the order of castes the sons of a Bráhmin begotten on wives of Bráhmin, Kshatriyá, Vaisyá and Súdrá castes, respectively, shall take four, three, two and one shares. The son of the Bráhmiṇí wife takes four times the share of a Súdrá; the son of the Kshatriyá wife takes three shares because he is inferior to the Bráhmiṇí's son by a fourth; the son of a Vaisyá wife takes two shares as he is inferior to a Bráhmiṇí's son by a half; the son of a Súdrá wife takes a share. The sons of a Kshatriyá begotten on wives of the Kshatriyá, Vaisyá and Súdrá castes, respectively, take three, two and one shares. The son of a Kshatriyá begotten on a Kshatriyá wife takes three shares because he is a degree inferior to the son begotten by a Bráhmin on a Bráhmiṇí wife; the son of a Kshatriyá begotten on a Vaisyá wife, two; and the son begotten on a Súdrá wife takes one. *Vidjah*] sons begotten by a Vaisyá on his wives of the Vaisyá and Súdrá caste. The plural number in *Vidjah* has reference to the possible plurality of the sons and not to the plurality of the husbands of the wife. The son of a Vaisyá begotten on a Vaisyá wife takes two shares, because he is inferior to the son of a Bráhmin begotten on a Bráhmiṇí wife by a half, and the son begotten by a Vaisyá on a Súdrá wife takes one share. In this manner, the rule should be applied whether the sons be equal or unequal in number.

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[1] Vasishṭha, XVII, 41. [2] Not found.
[3] Yájñavalkya, II. 125.

The sons of a Bráhmin begotten on his wives of the Kshatriyá and other castes shall not take land acquired by acceptance of gift. So the Sastra says :—"Land acquired by acceptance of gift shall not be given to the sons of the wife of Kshatriyá and other castes. Even if the father give it to them, the son of the Bráhminí may resume it when he is dead."[1] As the term "acceptance of gift" (Pratigraha) is used, they take land acquired by purchase, &c. So "the son begotten by a twice-born on a Súdrá wife does not take a share in land." The meaning is, that the son of a Súdrá wife begotten by any of the twice-born does not take shares in land acquired by acceptance of gift, purchase, &c. As for this other text which prohibits the giving of any share to the son by a Súdrá wife, viz. : "The son by a Súdrá wife does not share in the wealth of the Bráhmin, Kshatriyá and Vaisyá. Whatever his father may give him, that alone shall be his wealth,"[2] this is intended to lay down that no share shall be allotted at a partition to the son by a Súdrá wife where his father, during his lifetime, had given him something. But where nothing had been given by the father, his right to share certainly subsists.

Yájñavalkya lays down a special rule in the case of the son begotten by a Súdrá on a female slave:—"Even the son begotten by a Súdrá on a female slave shall obtain a share at the father's choice. But when the father is dead let his brothers make him the partaker of half a share. If brotherless he takes the whole in default of the daughter's son."[3] *Kámatah*] at the father's choice, he may take a share. That is, he has a share if the father give him one. The drift is, that the sons by married wives shall give him a half of their share. If brotherless, *i.e.*, having no brother born of a married wife, he shall take the whole paternal wealth if there are no daughters of married wives or their sons. If there be, the son of the female slave gets only half a share. Since the Súdrá is specially named, the conclusion is that sons begotten by the twice-born on a female slave do not in any manner obtain shares but are entitled only to food and raiment.

THE SHARE OF THE GRANDSON IN THE GRANDFATHER'S PROPERTY.

On this subject, Yájñavalkya says : "The allotment of shares among sons of different fathers is according to the fathers."[4] Sons of different fathers], the meaning is sons begotten by several brothers on their several wives. Among these, the allotment of shares in the property of the grandfather is according to their respective fathers. The purport is this : if there are three brothers, and one of them has one son, another two, and the third three, then these six (grandsons) do not divide their grandfather's property into six shares and take each a share; but the grandfather's property should be divided (first) into three shares among the three

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[1] Brihaspati, XXV. 30.
[2] Manu, IX. 155.
[3] Yájñavalkya, II. 133 and 134.
[4] *Ibid*, II. 120.

brothers, and the only son of one brother shall (then) take the one share of his father, the two sons of another brother the share of their father; and similarly in the other case also. If after the begetting of sons, some of the brothers die and some others are alive, then the division between the brothers and brothers' sons shall be on the lines laid down already, *i.e.*, the brothers shall take their own shares and the brothers' sons shall take their fathers' shares.

The same author states a distinction in the case of a partition taking place with the father of the grandfather's property: "In land acquired by the grandfather, in corrody or in chattels, the ownership of both father and son is equal."[1] Land] rice-field, etc. *Nibandah*] an assignment or corrody; so many leaves receivable from a plantation of betel-pepper, or so many nuts from an orchard of nuts; this is called corrody, because it is by this computation that quantities of leaves, etc., are assigned by those conversant with that trade. Chattels] gold, silver, etc., obtained by acceptance of gift, conquest, trade, agriculture, etc. In the property of the grandfather consisting of all these, the ownership of both father and son is equal. Therefore, the meaning is that the restrictions such as 'while the father is alive partition should take place only with his consent,' 'the father shall take two shares' and 'the allotment of shares shall be according to the fathers', etc., do not apply. The ownership of the grandson begotten by a Súdrá upon a female slave is the same; but there is a distinction with regard to his share. The special mode of division in his case is the same as that laid down for the partition of a subsequently born son.

Nor could it be objected that there is an inconsistency, as the text 'among sons of different fathers', etc., lays down the right of the grandson in the grandfather's wealth to be through the father and not by himself and as the text 'in land acquired by the paternal grandfather, etc.', lays down the equal right of the father and the son in the grandfather's wealth. The text 'among sons of different fathers, etc.', applies to the partition of the grandfather's wealth among grandsons whose fathers are dead. This is indicated by the expression 'the allotment of shares is according to the fathers'; it is understood that the grandsons have a claim to the grandfather's property only through their fathers. This, however, does not hold good where the father is alive, as he has ownership in the grandfather's property by his mere birth; but if the father is dead, the grandsons have a right to the property, as the father's right to it has ceased by his death; thus the mode of division of the grandfather's property is restricted by the text: "the allotment of shares among sons of different fathers is according to their fathers." "Land acquired by the grandfather"; this applies in respect of the grandson's right to the grandfather's property when both the father and the son are alive; and this is indicated by the portion of the text 'of the father and the son in that property

[1] Yájñavalkya, II. 121.

shall be equal'; for as the deceased could have no ownership, the portion of the text, 'the right of the father and the son in that property shall be equal' would have no application where either of them is dead. Where there are three brothers, and one of them has one son, another two and the third three, and where all the fathers and sons are alive, the allotment shall be made as formerly laid down. But if, however, among the issue of one brother both sons and grandsons exist, among the issue of another only sons are alive and among the issue of the third only grandsons, then the sons whose father is alive take the grandfather's property as laid down by the rule 'land acquired by the grandfather.' Where the sons have predeceased and the grandsons alone are alive, then the grandsons only shall not take their shares. This is according to the principle of the text, 'among sons of different fathers, etc.,' and not of the text 'in land acquired by the grandfather', for their fathers are dead; this rule of division applies only where the grandfather is dead. Where the grandfather is alive, partition takes place at the will of the grandfather or his son but not at the will of the grandson; because when speaking of the time of partition it has already been said that partition takes place at the will of the father sometimes and at other times at the will of the son.

The Determination of the Share of the Mother.

On this subject, Yájñavalkya says: "If he make the shares equal, then his wives should be made equal sharers, if no *stridhana* had been given them by the husband or the father-in-law."[1] The word '*sama*' (equal) denotes that these should be neither less nor greater; or the word 'equal' may refer to the allotment of shares as pointed out in the text 'they take four, three, two and one shares respectively'; it is said to be equal, being legal, *i.e.*, in conformity with the codes of law. Such being the case, if the father makes of his own free will his sons equal sharers, then his wives also should be made equal sharers. If the sons begotten on Bráhminí and other wives be equal sharers, then their respective mothers also shall get equal shares; if, however, the *múrdhávasikta* and other sons get three, two and one shares respectively, then their mothers also shall take equal shares with their sons.

To whom no *stridhana* had been given] ornaments, etc. If stridhana had been given, then the mode of allotment should be understood to be that laid down in the chapter on *Adhivedhanika* (property given at the time of supersession). The manner laid down there is this, *viz.*, if it had been given, a half is ordained. The word 'half' (in 'half is ordained') means 'a portion' not an exact moiety.

By how much money the *stridhana* falls short of the son's share, so much money should be given and the wife's share made

[1] Yájñavalkya, II. 115.

equal to the son's. But if it be objected that on this view *stridhana* will become partible, only the mode being different, and that this would conflict with the text laying down the impartibility of *stridhana*, it is unsound. Where there is a special rule, the general rule of impartibility of *stridhana* yields, but where there is none, it stands good. Here the texts 'to whom no *stridhana* has been given', and 'if it has been given, a half should be given' must necessarily be read together and are exceptions to the general rule. But when the father makes an unequal distribution according to the text 'he may give the eldest the best share', then the wives do not get the best shares, etc.; but only take equal shares in the common property left after the allotment of the best shares, etc. They also get the deductions allowed for them.

Likewise, Ápastamba: "*Paribhánda* and the household ornaments belong to the wife, as also household utensils."[1] *Paribhánda*] millstone, mortar, pestle, winnowing basket, etc.

Even at the partition instituted by the sons after the death of the father, the mother gets an equal share. So Yogísvara: "Of sons dividing after their father, the mother also takes an equal share."[2] After the father] after the father's death. Here also the two texts: 'to whom no *stridhana* had been given by the husband or the father-in-law' and 'if given, a half is ordained', should be applied, because of parity of reasoning and of want of anything to the contrary; this is the view of Vijñánesvara, Dháresvara and others. Otherwise, the word 'half' in 'if given, a half is ordained' will denote an equal partition; therefore, it is implied that in case there is stridhana, a half of the share of a son should be given, *i.e.*, if the son has ten nishkas, then the mother should be given an allotment of five nishkas. The ornaments of the wives of brothers are certainly indivisible; likewise even where the females themselves are parties to the partition, the ornaments previously given severally to each of them are also indivisible; and this will become clear in the chapter on 'Impartible Wealth'. When, however, the father and the son divide and take the wealth acquired by the grandfather, then the wife of the grandfather gets an equal share with her son, in the manner already laid down, in the text: "The mother too gets an equal share," and because it is the property of the grandfather. If the wives of the paternal grandfather are issueless, then they receive their ornaments given out of affection and no share. Thus at a partition of the effects of the grandfather, the mother does not receive a share, but only her ornaments, etc.

"If he makes the shares equal, his wives shall be made equal sharers," likewise "let them divide after the death of the father; and the mother also shall take an equal share;" for these texts apply to the case in which the father has predominant interest; that wealth which the father obtained at a partition or acquired by

[1] Ápastamba, II. 6, 14, 9. [2] Yájñavalkya, II. 123.

acceptance of gift is wealth in which the father had a predominant interest. It has been already said that the father's wealth goes to the son.

On the question who is entitled to the mother's wealth, Yájñavalkya says: "The wealth of the mother remaining after discharging her debts, the daughters shall take; in their default, their issue."[1] The daughters shall divide and take the mother's effects remaining after discharging the debts contracted by her. The distinction in this case is this: Where there are both married and unmarried daughters, the unmarried daughters alone shall take. In the absence of the unmarried daughters, the poor among the married daughters shall take.

Likewise Gautama: "The *stridhana* belongs to the daughters unmarried and unendowed."[2] *Apratta*] unmarried. Unendowed] poor. In default of daughters, as in the absence of sons, the issue of the daughters (succeed). The meaning of this, *viz.*, that the daughter takes the property first and then her issue, is stated in the latter portion.

Next, Persons competent to take the Stridhana of a Woman dying without Issue.

On this point, Yájñavalkya: "If a woman dies leaving no issue, her relations shall take that; the *stridhana* of a woman married in the four forms of marriage, Bráhma, etc., goes to her husband; if in the other forms of marriage, it goes to her parents. But if she has issue, it goes to her daughters."[3] The *stridhana* of a woman dying without any issue, *i.e.*, having no daughter, daughter's son, son or son's son, etc., her relatives as husband, etc., take. If the woman is married in (any of) the Bráhma, Daiva, Ársha or Prájápatya forms dies, her husband gets her wealth; in default of him, those persons who are nearest related in the husband's family take. The inference is that in their absence, those who are nearest in the father's line take. The wealth of a woman married in (any of) the remaining Ásura, Gándharva, Rákshasa and Paisacha forms, the parents take; first, the mother; and in her absence the father; in default of him, the nearest relations in the family of the father; in default of them, the nearest relations in the family of the husband. If she has issue, her wealth goes to her daughters and daughters' sons, etc., in whatever form of marriage she might have been married. If the term 'daughter' here were taken to denote the daughter of the mother whose wealth is divided, it would simply be repeating what has been already laid down in the text, "the daughters shall take the wealth of the mother remaining after discharging her debts." Even among granddaughters, if there exist both married and unmarried, the unmarried alone take; if there are both endowed

[1] Yájñavalkya, II. 117. [2] Gautama, XXVIII. 24.
[3] Yájñavalkya, I. 145.

and unendowed, the unendowed alone; if there exist granddaughters unequal in number born of different mothers, the allotment of shares is by the mothers. That is stated by Gautama: "There is a special mode of division in the case of the lines of the father, mother and sister."[1]

If there exist both daughters and granddaughters, something but not a share should be given to the granddaughters out of affection. So Manu: "To the daughters even of these (daughters), something according to merit should be given out of the grandmother's property, as a token of affection."[2] Daughters of these] daughters' daughters. In the absence of granddaughters, daughters' sons shall take, as is laid down by Nárada: "The daughters shall take the wealth of the mother; in the absence of daughters, their issue."[3] The meaning is that the daughters take the wealth of the mother; in the absence of these daughters, their progeny, *i.e.*, daughters' sons take. Another reading is 'the issue' (nominative singular).

So the daughter's sons alone take; not the issue (daughter) of the daughter's daughter, as she is more remote than the daughter's son. In default of these daughters' sons also, the sons, and grandsons, denoted by the word 'issue' in "the daughters take what remains of the wealth of the mother after discharging her debts, and in their default their issue," take the wealth in their order. With this same idea, Manu says: "After the death of the mother, the uterine brothers shall divide her wealth equally, as also unmarried uterine sisters."[4] The purport of this text is: "those sisters who are born of the same mother take; in their absence, their descendants up to daughter's son take; in their absence, the (uterine) brothers. The sons of the deceased woman and not the sons of her co-wives take; in their default, the grandsons." The use of the word 'uterine' in 'the uterine brothers shall divide equally' is to exclude the sons of co-wives. In the absence of her own sons, the sons of co-wives succeed; if, however, the daughter of one co-wife belongs to a higher caste, than the son of another co-wife, then the daughter of higher caste alone takes; in her default, the daughters' sons of the same description alone.

So also Manu: "The wealth of a woman given her by her father, the Bráhmiṇí daughter takes; or else it goes to her issue."[5] It is said that the maiden takes the wealth of the woman; the word 'woman' is used absolutely, and so also the word 'maiden.' As these two words 'woman' and 'maiden' are not correlatively used, these may be understood to refer to the stepmother and the stepdaughter also. The word 'Bráhmiṇí' is used illustratively of a maiden of higher caste. Thus the stridhana of a Súdrá woman, the Bráhmiṇí,

[1] Not found.
[2] Manu, IX. 193.
[3] Nárada, XIII. 2.
[4] Manu, IX. 492.
[5] Manu, IX. 198.

or Kshatriyá or Vaisyá daughter takes; so the Bráhmiṇí or the Kshatriyá daughter takes the stridhana of a Vaisyá woman; and likewise the Bráhmiṇí daughter takes the wealth of the Kshatriyá woman. Here as it is stated that a daughter of a co-wife of higher caste takes the property of a woman of a lower caste, it is understood that the daughter of a co-wife of a lower caste has no right to the wealth if there exist sons of a co-wife of a higher caste.

In default of sons and grandsons, the brother takes; in his default, his sons; thus in this order the brothers, etc., are heirs. The stridhana, excepting *sulka* alone, should be divided; for the brothers alone take the *sulka*. So Gautama: "The sister's *sulka* belongs to the uterine brothers, and after them to the mother."[1] The meaning is that even if the heirs from daughters to son's sons are alive, the uterine brothers shall alone take the sister's *sulka*. Something about a betrothed damsel is stated in the connection of stridhana.

Yájñavalkya: "He who having betrothed a damsel (to a certain person) afterwards keeps her from him, should be punished, and made to pay the expenses with interest; if she dies, let him pay what was given (by the bridegroom for the damsel) after calculating the expenditure of both parties."[2] A father who having promised his daughter (to a person) takes her back from him, even though he is free from defect, should be punished by the king, according to his caste, wealth and general character, etc. He should be made to return to the bridegroom with interest all the money spent by the bridegroom, his father, etc., for the betrothal. If the betrothed damsel dies before marriage, the bridegroom shall take back the *sulka* previously given (to the damsel), *e.g.*, rings, etc.; after doing what? after calculating the expenditure incurred both by himself and the giver of the bride; (the meaning is) let the bridegroom take only what remains of the property given to the damsel, *e.g.*, rings, etc., after deducting from it the expenses incurred by both the parties on account of the betrothal.

Baudháyana states a distinction in the taking of head ornaments, etc., given out of affection to a damsel before the time of betrothal, by her mother's father, father, etc., intending her own ownership: "Let the uterine brother always take the wealth of a deceased damsel; in his default, the wealth goes to the mother, and in her default to the father."[3] By an easy transition from the subject on hand, something is said even in the case of the living wife.

Yogísvara: "The husband need not repay to the wife stridhana taken by him during famine, for the performance of religious duties, during disease or while in duress."[4] Performance of religious duties], *i.e.*, those which should indispensably be performed. In duress] confinement in jail, etc. If under these circumstances, the husband having no other resource takes the *stridhana*, he need not return

[1] Gautama, XXVIII. 25.
[2] Yájñavalkya, II. 146.
[3] Not found.
[4] Yájñavalkya, II. 147.

that wealth to her; the meaning is that he cannot be compelled to repay; if under other circumstances, it should certainly be repaid; as the husband only is permitted (to take) in the above-mentioned circumstances and as punishment is laid down in the case of others, according to the text: "Those relatives who take perforce their wealth while they are alive, a righteous king should visit with the punishment for theft."[1]

Yájñavalkya thus lays down the nature of *stridhana*: "What is given by the father, mother, husband and brother, what is obtained before the nuptial fire, and what is given at the time of supersession, etc., are declared to be stridhana; as also what is given by relatives, *sulka* and anvádheyaka."[2] Obtained before the nuptial fire] given by maternal uncles, etc., at the time of marriage before the fire.

Ádhivédhanika is also described thus: "To a superseded wife, let him (the husband) give an equal sum, for the act of supersession, provided stridhana had not been given her; but if it had been given, one half shall be allotted."[3] A superseded wife is one over whom a second marriage is contracted. The meaning is that ádhivédhanika is money given to her for being superseded; he shall give an equal sum] the meaning is that a sum equal to that spent in ornaments, etc., for the second wife should be given to the first (superseded) wife. Here he lays down a distinction: 'to whom no stridhana had been given.' The meaning of this has been explained at length in the connection of the determination of the mother's share. By the particle 'etc.,' in 'ádhivédhanika, etc.,' are meant what was gained by the spinning of cotton, by sale, partition, acceptance of gift, finds, etc.

Kátyáyana: "Whatever is given to women at the time of their marriage before the nuptial fire is denominated by the sages 'stridhana given before the nuptial fire.' Again, what a woman gets when being led from the house of her father (to that of her husband) is called '*stridhana* given at the time of the nuptial procession.' Whatever is given out of affection either by the mother-in-law or father-in-law as a token of affection, and that which is given in return for her humble prostrations is called '*stridhana* given out of affection.' What is received by a woman before or after marriage in the house of her husband or of her father, from her brother or her parents, is called saudáyika. What is received by a woman after marriage in the family of her husband or in the family of her father is called gift subsequent."[4]

THE ORDER OF SUCCESSION TO THE PROPERTY OF A DECEASED DIVIDED PARCENER LEAVING NEITHER SON NOR GRANDSON.

On this subject, Yájñavalkya says: "The wife, the daughters likewise, both parents, brothers, likewise their sons, the gotrajas,

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[1] II. Cole. Dig., 598, CCCCLXXX.
[2] Yájñavalkya, II. 144.
[3] Yajñavalkya, II. 148.
[4] II. Cole. Dig., 585, CCCCLXIV and XXXXLXV and 586, CCCCLXVI; 587, CCCCLXVIII.

bandhus, the disciple and the fellow-student; of these, on failure of the preceding, the next in order is the heir to the estate of one who has departed for heaven, leaving no issue; this rule extends to all classes."[1] Wife] one who had been duly married. The singular is with regard to the caste. Therefore if they are equal or unequal in caste, they shall divide the wealth and take their proper shares according to the rule laid down in 'four, three, two and one shares.'

In default of the wife, the daughters take. So also Kátyáyana: "The wife takes the wealth of the husband if she remains chaste; in her default, the daughter if she is unmarried."[2] By the distinction laid down in 'if she is unmarried' it is understood that in case both married and unmarried daughters exist, the unmarried only take; in default of the unmarried, the married take. Even among the married, the poor alone first take; and in their default only, the rich; as the reasoning employed in the rule laid down by Gautama: 'stridhana goes to the daughters unmarried and unprovided for' applies equally to the paternal wealth.

In default of the daughter, the daughter's son even is the heir; as laid down by Vishṇu: "If there exist neither sons nor grandsons of a person, the daughter's sons shall take the wealth; for the male offspring of a son and of a daughter are considered equally qualified to perform the obsequies for the person."[3] This meaning is also inferred from the use of the particle 'also' made use of by Yájñavalkya in the text, 'the daughters also.'

In the absence of the daughter's son, the parents are the heirs. Parents, *i.e.*, mother and father. The order of mention in the expansion of the compound must also be understood to apply to the taking of wealth. Hence the mother takes first; and in her default the father. This order in the whole sentence 'the wife, the daughters, etc.,' is stated in the latter portion of the passage, 'in default of the preceding, the succeeding is the heir'; and that all that is correct is laid down by us in the 'inheritance' chapter of the Subodhini, a commentary on the Mitákshará; and it is not here written for fear of redundancy.

In default of the father, the brothers (take); here also it is to be understood that the uterine brothers take first, because of their nearness of relation owing to their being born of the same mother, and that in the absence of uterine brothers, the half-brothers succeed; heirship should be understood to arise according to the nearness of relation. 'To the nearest sapiṇḍa, the inheritance next belongs'; the meaning is that he among the sapiṇḍas who is the nearest related by particles of body shall take the wealth (of the deceased). In default of brothers of both the classes, their sons, *i.e.*, brothers' sons take; even here, the sons of uterine brothers take first; in the absence of these, the sons of half-brothers. If, however,

[1] Yájñavalkya, II. 135.

[2] Not found.

[3] Not found.

a brother dies and his wealth goes to the brothers according to the rule laid down in "the wife, the daughters also," and if before the partition of that takes place one of the brothers dies leaving sons, then the sons shall certainly get their father's share, according to the rule 'among sons of different fathers, the allotment of shares is according to the fathers.' 'The gotrajas'; by this term are meant the paternal grandmother, the paternal grandfather, his sons, and their sons, and in their default the paternal great-grandmother and the rest; and in default of them also, the samánodakas take (the property). Here this is the order. In default of brothers' sons, the paternal grandmother takes the wealth; in her default, the paternal grandfather; for just as the father has a right to the property only after the mother, so also the succession of the paternal grandfather is only after the grandmother. In default of the paternal grandfather paternal uncles succeed, in the same way as brothers in default of the father. Even here the relative position of brothers of full and of half-blood is the same: the sons of the paternal grandmother take the inheritance first and in their default the sons of the co-wives of the paternal grandmother. In default of even these, the sons of paternal uncles succeed in the same way as the brother's sons (when brothers of both kinds are extinct). In their default, the paternal great-grandmother; in her default, the paternal great-grandfather; in his default, the sons of the paternal great-grandfather. Thus the order of heirs up to the seventh degree should be known by the rule 'in the absence of the brother, his sons succeed.' In default of sapiṇḍas to the seventh degree the samánodakas succeed; and in this case also, the aforementioned distinction of nearness of relation should be applied. In the absence of gotrajas, bandhus take the wealth. Bandhus are of three kinds, *viz.*, Átma-bandhus, Pitri-bandhus and Mátri-bandhus; as is laid down by Vriddha Sátátapa: "The sons of one's father's sister, the son's of one's mother's sister, and the sons of one's mother's brother, are known as one's Átma-bandhus. The sons of one's father's father's sister, the sons of one's father's mother's brother's mother's sister, and the sons of one's father's mother's brother are known as one's Pitri-bandhus. The sons of one's mother's father's sister, the sons of one's mother's mother's sister, and the sons of one's mother's mother's brother, are known as one's Mátri-bandhus."[1] In this case also, according to the order of enumeration, the Átma-bandhus get the wealth first, because of their nearness of relation. Similarly, in default of them the Pitri-bandhus; and likewise in default of the Pitri-bandhus, the Mátri-bandhus. This is the order. In default of even the bandhus, the preceptor (takes;) and in default of the preceptor, the pupil.

So also, Ápastamba: "In the absence of sons, the nearest sapiṇḍa relation takes; in his default, the preceptor; in his default, the disciple; in default of the disciple, a fellow-student, whose

[1] Not found.

Upanáyana was celebrated by, or who was studying under, the same preceptor (as the deceased); in default of the fellow-disciple also, Srotriyas inherit the wealth."[1]

This is laid down by Gautama: "Srotriyas shall take the wealth of a deceased Bráhmin leaving no issue."[2] A Srotriya] one who has studied one Sákhá (of the Veda). In the absence of even a Srotriya, any Bráhmin who is near shall take.

So also Manu: "In default of all, Bráhmins who are well-versed in the three Vedas, pure and who have controlled their senses, shall take the wealth."[3] Never shall the king take the wealth of a Bráhmin; for it is stated by Nárada: "The wealth of a Bráhmin, on his death without any heir, should be given only to Bráhmins; otherwise the king becomes tainted with sin."[4]

Manu: "The wealth of a Bráhmin shall never be taken by the king; this is eternal law."[5]

The wealth of a Kshatriyá, etc., in the absence of all heirs down to the fellow-student is taken not by Bráhmins but certainly by the king. That is laid down by Manu: "The wealth of persons of other castes, in the absence of all heirs, the king takes."[6]

Yájñavalkya states an exception to the mode of inheriting by sons, etc., in order: "The heirs to the wealth of an ascetic, a sanyásin and a brahmachárin are in their order, the preceptor, the virtuous disciple, and the brother in holiness of the same order."[7] Brahmachárin] permanent student, not one who wishes to pass into the order of a householder. Virtuous disciple] one who has studied and meditated upon the knowledge of Átman. Brother in holiness] one who is regarded as a brother. Ekatirthi] one of the same order of life, *i.e.*, an ascetic who lives in the same order. One who is a brother in holiness and belongs to the same order of life is a brother in holiness of the same order. Here the word 'order' (in 'in their order') intends inverse order. (Thus) the wealth of an ascetic, *i.e.*, food, etc., acquired in the manner laid down in the text: "Let him hoard wealth sufficient for a day, a month, six months or a year, and let him abandon all that in the month of Asvayuja,"[8] a fellow-student takes. The wealth of a sanyásin consisting of cloths, books, etc., the virtuous disciple takes. The wealth of a permanent student consisting of books, etc., the preceptor takes.

PARTITION AMONG RE-UNITED BROTHERS.

On this subject, Yájñavalkya: "A re-united brother shall take the wealth of a re-united brother; and a uterine brother that of a

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[1] Ápastamba, II. 6, 14, 2 and 3.
[2] Gautama, XXVIII. 41.
[3] Manu, IX. 188.
[4] Not found.
[5] Manu, IX. 189.
[6] *Ibid*, IX. 180.
[7] Yájñavalkya, II. 140.
[8] *Ibid*, III. 47.

uterine brother. One born of a different mother, if re-united, shall take the wealth; but not one born of a different mother if not re-united. A uterine brother even if not re-united shall obtain (the wealth) and not a brother born of a different mother, even though re-united."[1] The property which was once divided but afterwards mixed is called samsrishta; he who has such wealth is called samsrishtin (re-united). The wealth of such a person if he dies without sons or grandsons, the re-united parcener shall take, even though his wife be present. The singular in 'samsrishti' is purposeless. Therefore (the meaning is) the re-united parceners shall divide the wealth and take their shares; and they shall also maintain the widow (of the deceased).

Re-union can take place only with the father, brothers and paternal uncles, and with nobody else. That is laid down by Brihaspati: "He who being once divided, lives again, through affection, together with his father, brother or paternal uncle, is termed re-united."[2] If while the wife of the deceased, whose pregnancy was not manifest, was alive the re-united parceners divide and take his wealth, and if subsequently of this pregnancy a son be born, then the wealth of the re-united parcener should be handed over to the son; it is to be understood in the latter portion also.

"A uterine brother of a uterine brother"; the wealth of a re-united parcener, a mere re-united parcener alone shall not take, but a uterine brother shall take; not a half-brother. "One born of a different mother, if re-united, (shall take the wealth), but not one born of a different mother, if not re-united; a uterine brother shall take even though not re-united; but not one born of a different mother though re-united." One born of a different mother, if he be re-united, shall take the wealth; one born of a different mother if he is not re-united shall not take. This is inferred by the use of the expression 'even if not re-united' in the text: "A uterine brother shall take even if not re-united." In the case of the half-brother, re-union alone is the ground of his taking the wealth; the word 'not re-united' is equally related to both what follows and what precedes, like the eye of a crow. Therefore 'though not re-united, he takes the wealth if united' is a separate sentence. 'Though not re-united', *i.e.*, though his separate wealth had not been mingled with the wealth of others. One re-united, born of the same womb, takes the wealth of the deceased re-united brother. By this it is indicated that his being uterine is the only ground of his taking the wealth. Here the word 'not re-united' is understood in the latter half of the passage also as it is in the former. Therefore 'one born of a different mother, even though re-united shall not (take)' is the latter portion of the text. In this sentence by the word 're-united' is denoted '(any) re-united parcener' and not only 'a uterine brother re-united.' Even if the re-united be one born of a different mother, the brother born of a different mother alone takes the wealth. Here the par-

[1] Yájñavalkya, II. 138 and 139.

[2] Brihaspati, XXV. 72.

ticle '*eva*' (alone) if taken in the light of Manu's text means this. Where there is a uterine brother not re-united and a half-brother re-united, then the uterine brother shall get a share of the wealth, owing to his being born of the same mother; and the half-brother also takes another share owing to the existence in his case of the relation of re-union.

Manu also: "If divided brothers again living together institute a second partition, then the partition shall be equal; there is no right of primogeniture in this case. The deduction for the eldest is one-twentieth of the property and the best of all chattels"[1]; the meaning is: nothing implying unequal partition should take place. Likewise: "If among them, one whether the eldest or the youngest loses his share or dies before partition, his share is not lost."[2] The meaning is this: if among re-united brothers one whether eldest or youngest, is, before shares are allotted, deprived of his share on account of entering another order or being put out of caste, or dies, his share is not lost. His share therefore should be separated and kept; but they should not divide and take it. How the separately kept property should be disposed of is laid down thus: "Such of his uterine brothers as are re-united, having assembled shall divide his wealth, as also uterine sisters."[3] In these two texts by the use of the two expressions 'uterine brothers' and 'brothers', 'uterine brothers' should be understood to mean 'brothers born of the same mother' and 'brothers' to mean 'brothers born of different mothers'; otherwise there would be redundancy. 'Those of his uterine brothers who are re-united'; here by the use of the expression 're-united' it is meant that those uterine brothers who are denoted by that expression shall divide; and by the word 're-united' not being used, even those uterine brothers who are not re-united are also meant. Therefore the meaning of the text is this: the uterine brothers though not re-united, and likewise those who have gone to a foreign country shall assemble together and divide the reserved wealth in equal shares, *i.e.*, with no greater and less shares. So also those re-united half-brothers of the same caste; and also uterine sisters. The meaning is that all those from uterine brothers to uterine sisters shall divide the wealth in equal shares. The partition in the case of re-united half-brothers of other castes shall be according to the rule laid down in the text: 'four, three, two and one shares respectively.' As the use of the word 'samam' is sufficiently justified by its application to the case of half-brothers of the same caste, excluding brothers of different caste, there is nothing to prevent the application of the rule in the text, 'they take four, three, two and one shares respectively.'

Sankha says: "If one among the brothers die leaving no issue, or if one of them enter another order, the rest (of the brothers)

[1] Manu, IX. 113. [2] Manu, IX. 211.
[3] Manu, IX. 212.

shall divide his wealth, excepting the stridhana; or they should give maintenance for life to those of his wives as keep unsullied their husband's bed; and they may cut off that allowance in the case of others."[1] Others] those who do not keep their husband's bed unsullied.

Brihaspati: "He among the re-united parceners who earns more wealth by his learning, valor, etc., should be given two shares; and the rest shall be equal sharers."[2] The allotment of two shares should be understood in case he acquires greater wealth. Here the meaning is this: In default of re-united half-brothers, he among the uterine brothers who is re-united shall take the wealth of a re-united brother dying without issue; in default of re-united uterine brothers, he among the half-brothers who is re-united shall alone take the wealth. Here also among half-brothers, if some of them are of the same caste and others of dissimilar castes, then it should be inferred that the rule laid down in the text: 'they take four, three, two and one shares respectively' applies. Where the deceased's uterine brothers and half-brothers are re-united, then all of them shall take in the manner above mentioned. If the re-united brothers are half-brothers, and the non-re-united are uterine, then also uterine and half-brothers shall take; if the re-united brothers are uterine and the non-re-united are half-brothers, then the uterine brothers alone shall take. If some of the uterine brothers are re-united and some others are not, then the re-united uterine brothers shall take; because of their double relation, *viz.*, being re-united and being uterine. In all cases the widow gets her maintenance. Some say that the distinction here stated between brothers arising from being born of the same mother and of different mothers should be applied in the case of father's uterine brothers and father's half-brothers, by parity of reasoning. That is not reasonable; the text 'of the uterine brother, the uterine brother' lays down a special rule; as there is no reason to think that re-united brothers alone are not meant by the text, the term 'uterine brother' cannot include the paternal uncle, and as such a construction is inconsistent with the practice in the world; the mode of reasoning does not apply here, being opposed to the express texts. Therefore the whole is unexceptionable.

Persons incompetent to Inherit.

On this subject, Yájñavalkya: "The impotent, the outcast, his son, the lame, the insane, the idiot, the blind, and persons suffering from incurable diseases; these should be maintained, they being ineligible for a share."[3] His son] the son begotten by an outcast before the práyaschitta (expiation) is performed. Lame] devoid of a leg. The insane] incurably affected with insanity due to the combined effect of wind, bile and phlegm or to devil-possession. Idiot] one whose mental faculties are impaired, *i.e.*, one who is in-

[1] Found in Nárada, XIII. 25 and 26. [2] Brihaspati, XXV. 77.
[3] Yájñavalkya, II. 140.

competent to know what is good from what is bad. Persons suffering from incurable disease] persons suffering from chronic diseases as scrofula, etc. By the particle 'etc.' are included the enemy of the father, etc.

Likewise Nárada: "The enemy of the father, the degraded, the impotent, one who has committed sin, these, even though they be aurasas, do not get shares. How could they if they be kshetrajas?"[1]

Vasishṭha: "Persons who have entered a different order are shareless."[2] Different order] the orders of a perpetual student, ascetic and sanyásin.

Manu: "The impotent and the degraded, persons deaf and blind, from their birth, likewise the insane, the idiot and the dumb and also those who are devoid of an organ, are shareless."[3] Persons devoid of an organ] persons whose sensory organs have been impaired by disease and the like. These do not get shares, but should be maintained. So says Manu: "It is proper that a wise man should give according to ability maintenance to these without stint; if he does not give, he shall become degraded."[4] These] persons excluded from inheritance. Without stint] for life. The exclusion of these from inheritance is only where prior to division they are subject to irremediable defects; but if one subject to defect, at the time of partition, is cured of it after partition by medicine, etc., or by expiatory ceremonies, then he certainly gets his share on the principle laid down in the text: "the son begotten after division on a woman of the same caste takes a share."[5] The masculine gender in the words, *patita*, etc., is of no consequence, being found in the terms denoting the subject. Therefore the mother, the wife and the daughters if ill-behaved are certainly shareless. The impotent and the rest alone are incompetent to inherit; not their sons if they are free from defect.

So also Yájñavalkya: "The *aurasa* and the *kshetraja* sons of these are takers of a share if they are free from defect. The daughters of these should be maintained till they are provided with husbands. The sonless wives of these conducting themselves aright should be maintained, but if they are unchaste and perverse, they should be expelled."[6] The impotent can have only kshetraja sons; the rest may have aurasa and kshetraja sons. By the mention of aurasa and kshetraja sons alone, it is understood that the other kinds of sons have no shares. The appointed daughter also gets a share, as she is equal to the aurasa. So she is also denoted by the term 'aurasa.' The daughters are to be maintained, however, till marriage. The sonless wives of the impotent and the rest if well-behaved should be maintained. But the unchaste wives should be expelled.

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[1] Nárada, XIII. 21.
[2] Vasishṭha, XVII. 52.
[3] Manu, IX. 201.
[4] Manu, IX. 202.
[5] Yájñavalkya, II. 122.
[6] *Ibid*, II. 141 and 142.

Accordingly it is said: "The wives who are unchaste and perverse likewise should be expelled." Should only be driven out: the perverse should be maintained, as they are free from unchastity.

On Impartible Property.

On this point Yájñavalkya: "What else is acquired by oneself without detriment to the paternal estate, as presents from a friend, and gifts at the time of marriage, do not belong to the (rest of the) co-heirs. He among the co-heirs who recovers property descended in regular succession but taken away, need not give it to the rest of the co-heirs; as also wealth acquired by learning."[1] Without detriment to the paternal wealth] no injury being done to the father's wealth; this goes with 'presents from a friend, etc.' Presents by a friend] what was received from a friend. That parcener who among coparceners, such as sons, etc., recovers after being permitted property which was duly descended from father to son, but which was taken away by others and which was not recovered by the father and the rest owing to lack of ability, need not give that property to the other co-heirs. But the recoverer only shall take it.

Sankha, however, states a distinction in the case of land which was taken away and subsequently recovered: "He who recovers by labor the land previously lost shall be given a fourth part and the rest shall divide according to shares."[2] The meaning is that the rest of the co-heirs should, after giving to the recoverer a fourth part, divide the remaining land with the recoverer and take their respective shares. Wealth acquired by learning] acquired (as remuneration) for teaching, explaining the purport of the Vedas, the recitation of the Vedas, and for studying the Vedas, etc. As impartibility is stated as regards the property acquired from friends, etc., only when it is gained without any detriment to the paternal wealth, it is in effect said that presents from a friend, etc., when acquired to the detriment of the paternal estate are certainly divisible.

Here as the expression 'acquired without detriment to the paternal estate' qualifies only 'wealth got as presents from friends etc., or for learning'; therefore it is understood that wealth acquired as acceptance of gift even to the detriment of the paternal wealth, is certainly divisible; and such a practice is also observed.

Nárada: "A brother who looks after the family of another brother engaged in the acquisition of knowledge, shall get a share in the wealth, acquired by such learning, even though unlearned himself."[3]

Kátyáyana: "Wealth obtained by learning acquired while being maintained by another is called wealth acquired by learning."[4]

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[1] Yájñavalkya, II. 118 and 119.
[2] II. Cole. Dig., 464, CCCLIX.
[3] Nárada XIII. 10.
[4] II. Cole. Dig., 444, CCCXLVII.

Manu: "Let one not give to his co-heirs what was acquired by him by labor, without injury to the paternal wealth; as also wealth obtained by learning."[1] By labor] by service, war, etc.

Similarly: "Cloths, vehicles, ornaments, cooked rice, water and women, yogakshema and pasture ground for cattle; these are declared impartible."[2] The impartibility stated in respect of cloths is only in the case of cloths that have been worn. Vehicle] carriage, horse, palanquins, etc. In this case whatever is used by one should not be divided; or *patra* may mean money secured by documents.

So also Brihaspati: "Having discharged the debts secured by documents."[3] Discharged] paid up.

Kátyáyana: "Money secured by bonds." Here the meaning is this: only so much of the debts, as is undischarged, is impartible.

Brihaspati: "The manner above mentioned should be understood to apply in the case of debts secured by bonds. That should be cleverly divided, or else it will become useless. The cloths and ornaments should be divided, by selling them; the debts secured by documents by discharging them; and dressed rice by exchanging it for undressed rice."[4] Where there are many horses, etc., they are certainly divisible among parceners where they live by dealing in such animals. If goats, etc., are indivisible, being unequal in number, then they belong to the eldest.

So also Manu: "A single goat or sheep should never be divided. It is declared that a single goat or sheep should be given to the eldest."[5] Whatever ornaments are worn by any one are indivisible. So Manu: "The ornaments worn by females during the lifetime of the husband, let the co-heirs not take; if they take, they shall be degraded."[6] Here 'worn' means given to them out of affection, etc., to wear so as to produce in them an exclusive ownership. Dressed rice] cakes, etc. That should be eaten by all the co-heirs together. Water] its reservoir, *i.e.*, wells, etc.; this too is indivisible; but should be made use of by turns. Women] female slaves; women of the seraglio. Where the female slaves are unequal in number, they should be made to do duty by turns; if they are equal in number, they should be divided. But women of the seraglio even though equal in number are not divisible.

That is laid down by Gautama: "There is no division of women who were concubines."[7] The expression in the original means women of the seraglio. Yogakshema]; Yoga is the getting of what was not got already; by the word 'Yoga' are denoted those rites performable by srauta and smárta fires which are the causes

[1] Manu, IX. 208.
[2] *Ibid*, IX. 218.
[3] Not found.
[4] Brihaspati, XXV. 80 and 81.
[5] Manu, IX. 119.
[6] *Ibid*, IX. 200.
[7] Gautama, XXVIII. 47.

of acquiring what was not got already. By the word 'kshema' are denoted conservatory acts such as gifts outside the altar, construction of tanks, laying out of gardens, etc., for the purpose of protecting what has been already acquired.

These two, though belonging to the father are not divisible; even though acquired to the detriment of the paternal wealth, they are not divisible; according to the text of Laugakshi: "Kshema is a conservatory act; Yoga is a sacrificial act; so sages declare. They are declared to be impartible, as also bed and chairs."[1] Some others hold that by the term 'Yogakshema' are meant ministers, purohits, who afford prosperity (Yogakshema); others yet are of opinion that missiles, cowtails, umbrellas, shoes and the like are meant. Prachára] the way of ingress and egress to and from houses, gardens, etc. Here 'inequality' means inequality in the value of shares given and not in the number of articles given; as, if there are four sons and three horses, here, the inequality is due to the indivisibility into four shares.

As for another text: "Sacrificial things, kshema, vehicle, dressed rice, water and women; these are indivisible among sagotras even though descended for a thousand generations",[2] that has reference to the Kshatriyá and other sons of a man of the Bráhmin caste; because of the particular text: "Land obtained by acceptance of gift should never be given to the Kshatriyá son, etc."[3] Sacrificial things] things obtained by sacrifices.

It has been said that wealth acquired by valor, etc., is indivisible; but Vyása lays down an exception: "If a co-heir depending on common wealth gain by valor something such as carriages, etc., the brothers are sharers therein."[4] Common] mingled wealth; depending upon it.

Yájñavalkya: "In the case of an addition made to the common wealth, the division is declared equal."[5] The meaning is that if the united wealth is increased by agriculture, trade, etc., then the shares of all are equal, and two shares should not be given to the acquirer.

Supplementary Provisions regarding Partition.

On this subject, Yájñavalkya: "Property withheld by one co-heir from another and which subsequently comes to light, they shall again divide it in equal shares; this is fixed law."[6] The meaning is that if any property concealed from one another is discovered after partition, they shall divide it in equal shares only; they need not give a deduction of one-twentieth in favor of the eldest according to the text: "To the eldest, a twentieth."[7]

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[1] Not found.
[2] Not found.
[3] Brihaspati, XXV. 30.
[4] II Cole. Dig., 81, CX.
[5] Yájñavalkya, II. 120.
[6] *Ibid*, II. 126.
[7] Manu, IX. 112.

Likewise: "In case the partition is doubted, the fact of partition should be ascertained by means of relatives, bandhus, witnesses and documents and by houses and lands separately held."[1] If after partition a doubt arises in course of time as to the fact of partition, then the ascertainment of the partition should be made by means of gnatis, paternal relations, maternal relations as maternal uncles according to the aforesaid description, by witnesses and written partition-deed, and likewise by separate possession of houses and lands. The meaning is that it may also be ascertained by their separate performance of agriculture, and of the five mahayajnas.

Nárada: "If a doubt exist about the fact of partition, then it should be ascertained by gnatis, partition-deed and separate transaction of affairs. Among unseparated brothers the performance of religious duties is single; when partition has indeed been instituted, the performance becomes separate. Separated, not unseparated brothers can bear witness, stand surety, make and accept gifts."[2] Similarly: "If many persons born of the same man be separate in transaction of affairs, and religious rites and have separate implements of work, and do not consult each other in all affairs, they may even give away or sell their own shares; they can do all this as they please; for they are masters of their own wealth."[3]

Brihaspati: "Co-heirs, whether separated or unseparated, are alike in immoveable property; one is not qualified to give it away, to pledge, or to sell it."[4] Adhamána] pledging. This too is to facilitate the transaction of affairs and not to establish the fact of partition.

Here ends the Eighth Chapter of the Madana Párijáta.

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[1] Yájñavalkya, II. 149.
[2] Nárada, XIII. 36-39.
[3] Nárada XIII. 42 and 43.
[4] Brihaspati, XXV. 93.

APPENDIX A.

SAPINDA RELATIONSHIP.

1.—MITAKSHARA.

Vijñánesvara in his commentary (Mitáksharâ) on Sloka 52, Chap. I of Yájñavalkya Smriti says:

"She who is of the same body is a sapiṇḍa. One not so is an asapiṇḍa. The sapiṇḍa relationship lies in the connection through the particles of the same body. For instance, the son has sapiṇḍa relationship with the father because of the connection with the particles of the father's body. Similarly, with the paternal grandfather, etc., because of his connection with the particles of their bodies through the father. Similarly, with the mother because of the connection with the particles of the mother's body. Similarly, with the maternal grandfather and the rest through the mother. Similarly, with the mother's sister, mother's brother and the rest because of the connection through the particles of the same body. Similarly also, with the father's brother, father's sister and the rest. Similarly of the wife with the husband, because of producing the same body. Similarly, among wives of brothers mutually, because of their producing the same body with persons produced from the same body. Thus wherever the term 'sapiṇḍa' is found, connection through the particles of the same body, directly or indirectly, should be understood. It may be urged that if this is so ten days' pollution would follow even in the case of the maternal grandfather, etc., on account of the general language of the text: "Ten days' pollution on account of death is ordained in the case of sapiṇḍas." This would be so if there were not the special texts "others should perform in the case of the married, etc.," on that subject. Therefore, where there is no special text in respect of sapiṇḍas, there the text 'ten days' pollution, etc.,' applies. Sapiṇḍa relationship must necessarily be described as connection through particles of the same body; on account of the texts of Sruti: "One is born of one's self," etc.; also from the text "Thou art born in thy issue"; also from the text of Ápastamba: "He is himself born again and is perceived by the eye." Similarly, in the Garbhopanishad also: "This body is made of six sheaths, three (derived) from the father and three from the mother; bone, tendon and marrow from the father, and skin, flesh and blood from the mother." Thus in every place connection through particles of the body is mentioned. But if sapiṇḍa relationship consists in connection in the offering of rice-balls, there would be no sapiṇḍa relationship with the mother's issue, brother's sons and the rest. Where a compound word as a whole has some fixed technical meaning attached to it, the connotation of its different parts applicable to some particular cases must be neglected.

2.—Vaidyanatha Dikshitiyam.

On this subject, Vishṇu says: "Having assiduously studied the Vedas and learned them by rote, with a knowledge of their import, let him marry a girl of excellent marks after performing samávartana." Manu says: "Let a twice-born man marry, after he has, with the permission of his preceptor, bathed (on the completion of his studies) and performed samávartana, a wife of the same caste and endowed with good qualities."

Manu says: "Let him not take to wife a girl who has reddish hair or eyes, who has an excess of limbs, or who is diseased, who has either no hair or too much hair, who is loquacious, who is of a reddish-brown complexion, who bears the name of a star, a tree, a river, a barbarous nation, a mountain, a snake, or a servant, nor one who bears a terrific name. Let him marry a wife whose limbs show no defect, whose name is agreeable, who has the gait of a swan or an elephant, who has fine hair and small teeth and tender limbs. She, who is dwarfish, tall, lean or corpulent, who has reddish-brown eyes or who is of a yellowish-white complexion is not to be preferred or accepted, for she will bring death to her husband." Nárada says: "She who is suffering from chronic and loathsome complaints, she who is deficient of limbs, she who is immodest, she who has had previous carnal knowledge, she who has fixed her thoughts on another, all these are unfit to be married. These have been declared to be faults in maidens." Vyása says: "Let not a wise man marry a girl who shows signs of an incipient beard, who has a masculine appearance, who has a grating voice, who is lean, who has the voice of a crow, whose eyes cannot be thoroughly closed, or who has round eyes. Let him not marry her, the calves of whose legs are covered with hair, or one whose ankles are ugly, or one whose cheeks show dimples when laughing. Let not a wise man marry a girl whose lustre is not soft, whose finger-nails are white, whose eyes are reddish or whose hands and feet are large. Let not a man marry her who is too short or too tall, whose eyebrows are too close to each other, whose teeth show large gaps between them, or whose face is frightful. Let him not marry a girl whose heels are large, who has too much hair on her body, who is one of twins, whose teeth are brown, whose eyebrows hang low, whose eyes are reddish-brown. One must reject a girl who has no kindred, who is sickly from her birth or is not descended of a good family. Let not one marry a girl who has too much of hair or too little, whose complexion is either too dark or yellowish, who is born with an excess or a deficiency of limbs, who is not pure, who has much hair, who is hump-backed or sickly, who is vicious or foul-tongued or who is an orphan." Sátátapa says: "A householder who marries a girl that has the voice of a flamingo, the colour of the cloud, and eyes yellowish like honey, prospers." Manu thus lays down the necessity of marrying in the same caste: "She who is not a sapiṇḍa of his mother and does not belong to the same primitive stock (gotra) with his father and who

has not had previous sexual intercourse, is eligible for marriage by a man of the twice-born classes." The word 'amaithuni' means 'not previously subjected to sexual intercourse'; the word 'asapiṇḍa' means 'not connected by particles of the same body.' The sapiṇḍa relationship is created by a connection by particles of the body; for instance, the son is related as a sapiṇḍa to his father as the son's body contains particles of the father's body; so with the paternal grandfather, etc., for the connection by particles of the same body is created through the father; so with the mother—by connection with the mother's body; so also with the maternal grandfather, etc.—through the mother, etc.; so also with the mother's sister, the mother's brother, etc., and with the father's brother and the father's sister, etc., as the connection by particles of the same body exists; so also mutually between the wives of brothers, for they make but one body with those who are derived from the same body. Thus the term "sapiṇḍa" wherever used must be understood as denoting connection by particles of the same body. The existence of the connection by particles of the same body is made out by the Srutis. They say "One is born of himself" and "bring thyself forth in the form of thy children." Thus the Garbhopanishad: "This body is made of six *kosas* (sheaths), three (derived) from the father and three from the mother; the breath, the tendon and the marrow from the father, and the skin, the flesh and the blood, from the mother." Apastamba also says: "You are born of yourself. Be born in your issue. He is born as his issue. The same man born of himself becomes a separate object of perception. If sapiṇḍa relationship depends upon the offering of rice-balls during obsequies, then it will not exist in the maternal line or the brother's and the father's brother's, etc." Vijñánesvara in his work says that where a compound as a whole has some fixed technical meaning given to it, the connotation of its different parts applicable in some particular cases must be neglected; but the Smriti Chandriká, on the other hand, holds that the sapiṇḍa relationship exists among all persons connected with the offering of rice-balls during obsequies, either as givers of the ball, or receivers of it, or as receivers of the wipings of the hand after the offering of the rice-balls. A sloka says: "The three ancestors from the fourth upwards receive the wipings of the hand; the three ancestors from the father upwards are receivers of rice-balls. The seventh from them downwards offers them the pinda; the sapiṇḍa relationship extends to seven degrees." So says the Smriti. Nor could it be contended that if the existence of sapiṇḍa relationship were made to depend upon the offering of rice-balls during obsequies, it will not exist in the case of brother, father's brother, etc., for it is said that they are connected with this offering, they having to offer these to the same person or persons. Sarvabhouma says that though by laying down that persons having to offer rice-balls to the same person or persons, are connected with the offering by any of them and are, therefore, related as sapiṇḍas the sapiṇḍa relationship of brother, father's brother, etc., is established, still the sapiṇḍa relationship of daughter, sister, mother's brother

and his daughter will be negatived as they are not thus connected in this offering of rice-balls, that, in consequence, the texts which prohibit marriage of a girl within five degrees on the mother's side will be rendered nugatory, and that, therefore, sapiṇḍa relationship is defined as stated in "the three ancestors", etc. The saying of Manu that to the nearest sapiṇḍa his (deceased's) property goes, and the saying of Gautama that in default of sons, the sapiṇḍas of the deceased's mother and the disciple of the deceased shall have preferential rights relate to inheritance and the offering of oblations respectively. The fear that if sapiṇḍa relationship is made to depend upon connection by particles, either directly or indirectly existing, then this relationship can be argued to exist between all persons in the whole world which has had no beginning must be removed by a reference to the texts of Manu and others. Manu says: "The sapiṇḍa relationship ceases with the seventh degree." Gautama says: "A man of the second order should marry a wife who is of the same caste, who has not had previous sexual intercourse and who is younger than himself. Marriage can take place only between persons not having the same *pravara* and removed by relationship beyond seven degrees on the father's side and by five degrees on the mother's side." Sankha says: "Let men marry wives not belonging to the stock derived from the same primitive guide, of the same caste, and not within seven and five degrees by relationship on the father's and the mother's side respectively." Vasishtha says: "Let a man marry a wife who does not belong to the family descended from the same primitive guide, who has not had previous sexual intercourse, who is younger than himself, and who is not related to him within five degrees on the mother's side and seven degrees on the father's side." Paíthínísí says: "Let him not marry a girl though not belonging to the family descended from the same primitive guide, if she is related within five degrees on the mother's side or seven degrees on the father's side." Vishṇu says: "Let men marry wives who have not the same gotra or pravara and related to him beyond five degrees on the mother's side and seven degrees on the father's side." Yájñavalkya says: "Let him, whose life as bachelor is unsullied, marry a wife who possesses good qualities, who has not been enjoyed by another, who is beautiful, who is not his sapiṇḍa, who is younger than himself, who is not suffering from any complaints, who has brothers, and who does not belong to the family descended from the same primitive guide." Apastamba says: "To whom the mind and the eyes adhere, in her find (prosperity)."

In the matter of marriage, the relatives in the line of the stepmother to five degrees should be excluded. Although in the case of the stepmother the sapiṇḍa relationship of connection by particles of the same body does not exist, the existence of sapiṇḍa relationship is in her case established by an extended application of that term. Sumantu says: "All the wives of the father are mothers; their brothers, maternal uncles; their sisters, mother's

sisters; the daughters of these, mother's sister's daughters; their daughters, sisters; and the issue of these, the issue of the sisters; therefore they should not be married. Otherwise (if married) they would be making unlawful intermarriages." The sapiṇḍa relationship (of the stepmother) is also spoken of in the Śrutis and the Smritis as follows: "She becomes one with the husband in pinda, gotra and pollution." As the husband and the wife are sapiṇḍas, because of their making together but one body, sons, through the connection by particles of the body of their father, become sapiṇḍas with their stepmother and her sapiṇḍas. Therefore alone in the texts "Matritah Pitritastatha," "Matribandhubhyahpanchamam matripakshāchcha," and others, the general word 'matá' (mother) is used, not the word 'jananí' (one who brings forth). Therefore the persons related as bandhus in the line of the stepmother should be excluded as those in the line of the mother. Another Smriti says: "A man should exclude his brother's wife's sister and her daughter, and his father's wife's sister and her daughter." As the general term 'pitri' is here used, persons within seven degrees in the line of the father, other than the natural father, should also be excluded. Gautama also says thus: "Marriage should be between persons not of the same pravara and removed by more than seven degrees in the father's line and the line of the owner of the seed." A son begotten upon another's wife by Niyoga becomes the son of both. Yájñavalkya says that a son begotten by a sonless man upon another's wife by Niyoga becomes the heir of, and the giver of the funeral cake to, both, according to law. Another Smriti also says that he becomes the Dvyámushyáyaṇa of the owner of the seed and the owner of the soil. Similarly, in the case of the adopted sons, etc., both the gotras should be excluded because of their Dvyámushyáyaṇa character. 'The adopted son shall not have the gotra or the property of the natural father, but he whose upanayana has been performed in the natural father's gotra becomes after adoption a man of two gotras. He whose gotra is not known takes the gotra of the man who performs his upanayana; but he whose gotra is known becomes, like the adopted son, a man of two gotras. The son adopted, the son bought, the son made, the son of the appointed daughter and the son born of the Ársha form of marriage become Dvyámushyáyaṇas having two gotras. Therefore they should marry beyond five and seven degrees in both. This has been settled in Vijñánesvara's, Varadaraja's and others' works. The author of the Chandriká and others hold the other view. Márkaṇḍeya says: "One should exclude in marriage as his own mother, a mother who is not his sapiṇḍa, one whom he has been calling his mother and a sister who is not his sapiṇḍa." Vasishtha says: "One should always exclude as his own mother, a woman whom he has been calling his sister or his mother, and also a mother who is not a sapiṇḍa." Jábáli says: "The father, the grandfather and the great-grandfather, these three should be understood as connected by the funeral cake. The three, from the grandfather's grandfather upwards are connected by the wipings of the hand (*lépa*).

The propositus is the seventh. This is the relation extending to seven degrees spoken of by the sages." Such being the case, as the maternal uncle's son, etc., do not come in for a share in the same pinda or cake, they are not sapiṇḍas and, therefore, their marriage is certainly sanctioned. The many texts which declare that some consider girls within five degrees on the mother's side and even girls of the mother's gotra ineligible for marriage, etc., apply to the case of the appointed daughter and to the issue of women married in the Ásura and other forms; otherwise a married woman can have no other gotra than that of her husband. Nor could it be said that the married woman retains the gotra to which she once belonged. As she could not retain her own gotra she takes the gotra of her husband. It is said 'a woman at the seventh step of the marriage loses her gotra. She becomes one with her husband in pinda, gotra and pollution.' Logákshi says that the son of the appointed daughter is of his mother's gotra. 'The son of the appointed daughter should perform the obsequies of his mother, etc., the oblations of food, water, etc., according to his maternal grandfather's gotra; so said Prajápati. In the matter of the Ásura and other forms of marriage, Márkaṇḍeya says: "Where a girl has been married in the Bráhma and other forms, her obsequies, such as the offerings of rice-balls, libations, etc., should be performed according to her husband's gotra; and if married in the Ásura and other forms, according to the gotra of the father." The meaning is 'according to the mother's father's gotra.' The result is that, as in the case of the appointed daughter and in Ásura and other forms of marriage, there is no gift with water and the mother's sapiṇḍa relationship with the father and her continuance in the same gotra do not terminate, she continues to be the sapiṇḍa of the father, etc. Therefore the texts 'she who is, not the sapiṇḍa of his father and of the same gotra with his mother', etc., must be understood as having reference to the appointed daughter, etc. It might be asked why there should be anything said about the mother at all, seeing that the son being the sapiṇḍa of the mother becomes necessarily the sapiṇḍa of his mother's sapiṇḍas; we answer: When the son of the appointed daughter is abandoned by his maternal grandfather, then the sapiṇḍa relationship with him terminates. It may become possible for him to marry a girl who is the sapiṇḍa of his maternal grandfather. In order that it might not be done, the word 'mother' is here used. Similarly, as an adopted son loses his father's gotra by the very fact of his having been given away, a marriage with a girl of the gotra of his natural father may become possible. To show that it should not be done, the word '*pita*' is used here. The marriage of the son of a woman whose sapiṇḍa relationship has been terminated by her being married in the Bráhma and other forms with the maternal uncle's daughters, etc., though within five and seven degrees is lawful. All the texts prohibiting marriage with the maternal uncle's daughter, etc., refer to the case of the son of a woman married in the Ásura and other forms, and also of the son of the appointed daughter. The texts in

favor of the marriage of the maternal uncle's daughter, etc., refer to the case of the son of a woman married in the Bráhma and other forms. This is the law.

Manu thus lays down the necessity of marrying in the same caste:—"She who is not a sapiṇḍa of his mother and does not belong to the same primitive stock (gotra) with his father and who has not had previous sexual intercourse, is eligible for marriage by a man of the twice-born classes." The word 'amaithuni' means 'not previously subjected to sexual intercourse'. The word 'asapiṇḍa' means 'not connected by particles of the same body.' The sapiṇḍa relationship is created by a connection by particles of the body; for instance, the son is related as a sapiṇḍa to his father as the son's body contains particles of the father's body, so with the paternal grandfather, etc., for the connection by particles of the same body is created through the father; so with the mother—by connection with the mother's body; so also with the maternal grandfather etc.—through the mother, etc.; so also with the mother's sister, the mother's brother, etc., and with the father's brother and the father's sister, etc., as the connection by particles of the same body exists; so also between husband and wife, for they together make but one body; so also mutually between the wives of brothers, for they make but one body with those who are derived from the same body. Thus the term "sapiṇḍa" wherever used must be understood as denoting connection by particles of the same body. The existence of the connection by particles of the same body is made out by the Srutis. They say: "One is born of himself" and "bring thyself forth in the form of thy children." Thus the Garbhopanishad: "This body is made of six *kosas* (sheaths), three (derived) from the father and three from the mother; the breath, the tendon and the marrow from the father; and the skin, the flesh and the blood from the mother." Ápastamba also says: "You are born of yourself. Be born in your issue. He is born as his issue. The same man born of himself becomes a separate object of perception." If sapiṇḍa relationship depends upon the offering of rice-balls during obsequies, then it will not exist in the maternal line or the brother's or the father's brother's, etc., etc. Vijñánesvara in his work says that where a compound word as a whole has some fixed technical meaning given to it, the connotation of its different parts applicable in some particular cases must be neglected; but the Smriti Chandriká, on the other hand, holds that the sapiṇḍa relationship exists among all persons connected with the offering of rice-balls during obsequies, either as givers of the ball or receivers of it or as receivers of the wipings of the hand after the offering of the rice-balls. A sloka says: "The three ancestors from the fourth upwards receive the wipings of the hand; the three ancestors from the father upwards are receivers of rice-balls. The seventh from them downwards offers them the pinda; the sapiṇḍa relationship extends to seven degrees." So says the Smriti. Nor could it be contended that if the existence

of sapiṇḍa relationship were made to depend upon the offering of rice-balls during obsequies, it will not exist in the case of brother, father's brother, etc.; for it is said that they are connected with this offering, they having to offer these to the same person or persons. Sarvabhouma says that though by laying down that persons having to offer rice-balls to the same person or persons are connected with the offering by any of them and are, therefore, related as sapiṇḍas, the sapiṇḍa relationship of brother, father's brother, etc., is established, still the sapiṇḍa relationship of daughter, sister, mother's brother and his daughter will be negatived as they are not thus connected in this offering of rice-balls, that, in consequence, the texts which prohibit the marriage of a girl within five degrees on the mother's side will be rendered nugatory, and that therefore sapiṇḍa relationship is defined as stated in "the three ancestors, etc." The saying of Manu that to the nearest sapiṇḍa his (deceased's) property goes, and the saying of Gautama that, in default of sons, the sapiṇḍas of the deceased's mother and the disciples of the deceased shall have preferential rights to inheritance and the offering of oblations respectively. The fear that if sapiṇḍa relationship is made to depend upon connection by particles, either directly or indirectly existing, then this relationship can be argued to exist between all persons in the whole world which has had no beginning must be removed by a reference to the text of Manu and others. Manu says: "The sapiṇḍa relationship ceases with the seventh degree."

3.—Parasara Madhaviyam.

This disposes of the controversy about marrying one's maternal uncle's daughter, for the texts forbidding such marriages apply to the female offspring of women married in the forms beginning with the Gándharva, as in those cases sapiṇḍaship (between the woman and her parents) does not cease, but not to the female offspring of women married in the forms beginning with the Bráhma, as in these cases sapiṇḍaship ceases, and Sruti, Smriti and the practice of good men sanction them (marriages). The forbidding texts are (the following). Among them, Sátátapa:—"One of the twice-born classes having married one's maternal uncle's daughter, a woman of the mother's gotra or a woman having the same pravara, should perform chandrayana penance." Also Paithínisi: "We learn that daughters of the father's and mother's sisters and of the maternal uncle are according to rule one's sisters, and that one should avoid them." Also, Sumantu: "All the wives of one's father are one's mothers; their brothers are maternal uncles; their sisters are mother's sisters; and the daughters of these are one's sisters; and their offspring are sister's children; otherwise they would cause unlawful intermarriage." Vyása: "Mother's sapiṇḍas should be carefully avoided by the twice-born."

But how can these texts which are of general applicability be limited to special cases? We say by virtue of special texts. Thus

Manu says: "Having approached the father's sister's daughter, mother's sister's daughter and daughter of mother's intimate brother, (who are like a) sister, one should perform chandrayana penance. A wise man should not receive these three in marriage." 'Sister' is an adjective qualifying 'father's sister's daughter', and the rest. 'Intimate' qualifies 'mother's brother.' The word 'daughter' should be supplied there. 'Intimate,' *i.e.*, closely related, a sapiṇḍa, *i.e.*, brother of mother married in the forms beginning with Gándharva and whose sapiṇḍaship has not ceased. It is then that the adjective 'sister' applied to her daughter would have a meaning. For in the forms of marriage beginning with Bráhma in consequence of the cessation of sapiṇḍaship, the word 'sister' would be inapplicable. The same principle should be applied to the case of mother's sister's daughter. Hence, on the strength of the text of Manu containing the words 'sister' and 'intimate' the general prohibition is limited to special cases only. But in the forms of marriage beginning with the Bráhma, would not marriage follow of the mother's sister's daughter as of the maternal uncle's daughter? Not so; by reason of the ordinance of the prohibitive Smriti in respect of what is disapproved of by good men.

Yájñavalkya says that what is disapproved of by good men should not be followed:

'But what is hated by the world and (therefore) does not lead to Heaven, let him not do, though it be not at variance with the law.'

Though marrying one's maternal uncle's daughter is disapproved of by the good men of the North, the fact, that the good men of the South practise it, should not give rise to the suspicion that the practice of the Northerns is reprehensible. Nor should the Southerns be suspected of being actuated by passion, for such marriages are practised by persons who have indeed examined the texts sanctioning and forbidding them. But the marriage of mother's sister's daughter is disapproved of by the irreproachable practice of good men. The Sruti sanctioning marriage of maternal uncle's daughter runs thus: 'O Indra! come to this sacrifice by excellent paths and take this portion offered by us; this *vapa*, which has been dressed, is offered as your portion like the maternal uncle's girl and father's sister's daughter.' The meaning is this: O Indra, you come to this our sacrifice by excellent ways, and having come, take this portion given by us. The dressed *vapa*, *i.e.*, the *vapa* dressed with ghee, etc., has been offered in your favour. There are two illustrations to this. As a maternal uncle's girl, *i.e.*, daughter, is the sister's son's portion, *i.e.*, may be taken by him, *i.e.*, is fit to be married by the sister's son, and as father's sister's son is the portion of the son's son, even so this is your portion known as *vapa*. Also in Vájasaneyika: "Therefore from a common person, the eater and the eatable are born; may we meet at the

third or at the fourth." From a common person, *i.e.*, the same person, the eater, *i.e.*, enjoyer, and the eatable, *i.e.*, the person to be enjoyed, both are born; and these two resolve together, may we meet, *i.e.*, marry at the third or fourth generation from the common ancestor. Though this is only eulogium, yet as it is not in contradiction to any other authority, it is an authority as to the matter contained therein; for the texts which (apparently) contradict this have been explained (away) as relating to one who is mother's sapiṇḍa. Hence, being strengthened by an uncontradicted eulogium, it may be construed as an ordinance as in the case of 'placing above'. Thus in the matter of Pretagnihotra, the Sruti says: "He shall follow, placing the *samit* (sacrificial stick used as fuel) at the bottom, for indeed it is placed at the top in the case of devas." Here having ordained the placing of the *samit* with incantation of mantra under the oblation to the manes, the rest of the same sentence states that the placing of the *samit* above the oblation is in offerings to devas. The question is, is this (latter) a eulogium or an ordinance? As to this, the oppositionists say, it is a eulogium because it finds place in the same sentence as the placing (the *samit*) under the oblation. It would be proper to reaffirm a well-known fact and use it to extol (another fact). 'Placing above' is not a well-known fact anywhere and consequently cannot be used to extol (another fact) and therefore it being a new matter is construed as an ordinance, even though the sentence has to be split. Similarly, in construing "may we meet at the third generation" and other texts, it being new matter, the construction adopted is an ordinance that one shall marry one's maternal uncle's daughter. Therefore, this marriage has been sanctioned by Sruti. And it has been shown that Smritis allow the marriage of the maternal uncle's daughter, by causing cessation of sapiṇḍaship in forms of marriage (of mother) beginning with the Bráhma. And the practice of good men of the South has been quoted as blameless. But some are of opinion that the marriage of the maternal uncle's daughter is according to law in particular countries even with respect to forms of marriage (of mother) beginning with the Ásura. And they quote the (following) texts: Amongst them Baudháyana, "There is difference in five matters,—in the South eating with one whose upanayana has not been performed, and with one's wife; eating food prepared on the previous day, and marrying maternal uncle's daughter and father's sister's daughter. And in the North, selling wool; drinking spirits; dealing in animals having a double row of teeth; living by arms and sea-faring. One man practising them in the other country becomes blameable, and so that other in (this) one owing to the authority of (the practice of each) country." 'One', *i.e.*, the Southerner; 'in the other,' *i.e.*, in the Northern country, contracting connection by marriage with a maternal uncle, becomes blameable; but not in his own country; 'That other' is a Northerner, 'in this one,' *i.e.*, in the Southern country, drinking spirits and doing other acts is blameable but not in his own country. Why? "Owing to the authority of the

country," *i.e.*, as the propriety of the conduct is dependent on the country. And thus Devala: "What is fixed as a lawful conduct in a certain country, that conduct should be followed in that country, but the Smriti directs, not in another country." "Whatever be the law fixed in a country town or village, or in a city of people versed in the three Vedas, that law should not be disturbed." But if the conduct of good men is to be taken as an authority, marrying one's daughter would also become possible; for Prajápati did so. So was the Sruti: "Prajápati coveted his daughter." Not so, for the rule is "do not follow the conduct of devas." Therefore Baudháyana says: "What has been done by devas, and by Rishis should not be followed by men; they should only do what has been ordained." Thus the marriage of maternal uncle's daughter is established by the very ordinance: "who is not (his) sapiṇḍa," etc., by limiting it to (female offspring of women married in) the forms beginning with the Bráhma and to particular countries.

'Junior,' *i.e.*, less in age and size of body. On the inferiority of years Manu states how much she should be younger in age: "Let a man of thirty years wed an agreeable maiden of twelve; or let a man of thrice eight years wed a maiden of eight; with eagerness when religious rites are being lost." Also Brihaspati: "A man of thirty years should take to wife a maiden of ten years, who has not attained puberty; or a man of twenty-one may take one of seven." Also in Vishṇu Puráṇa: "One should take to wife (a maiden) whose age is to his as one is to three."

"Free from disease," *i.e.*, free from incurable diseases, such as consumption.

'Who has brother' *i.e.*, one who has a brother, senior or junior. This removes all doubt as to her being a putrika (appointed daughter). Therefore Manu says: "Her who has no brother, or whose father is not known, a wise man should not marry for fear she might be of the nature of a putrika." She, whose father's intention to make her a putrika (appointed daughter) or not is not known, should not be married. The implied sense is that, where no such doubt arises, a man may marry (a maiden) even though she has no brother. By saying "or whose father is not known" it is to be inferred that a maiden daughter becomes a putrika by mere resolve on the part of the father without any understanding with the bridegroom. And so Gautama: "In the opinion of some, one becomes a putrika by mere resolve; for fear of it, one should not marry a brotherless (maiden)." Also Manu: "A sonless man may make his daughter a putrika by this formality: The child that is born to this woman, may it be the offerer of svadha (funeral oblation) to me." If an arrangement be made with the bridegroom, the appointment of a putrika is clearly known. This arrangement is shown by Vasishṭha: "I shall give you this maiden adorned, who has no brother; the son that is born of this woman, may he be *my* son;" some persons read "may he be *our*

son." In the case of the putrika also, as in the case of the forms of marriage beginning with the Gándharva, her relation with her father and others, as sapiṇda and sagotra does not cease." Hence Logakshi says: "The son of a putrika should offer pinda and water to his mother as belonging to the gotra of his maternal grandfather; so says Prajápati." Hence, one who suspects the case of a putrika as detailed above, and desires to have sons (of his own), should marry only one who has a brother.

"Not born of the same Ársha and gotra." Ársha, *i.e.*, belonging to Rishi, *i.e.*, pravara. This means the group of Rishis differentiating from the Rishi who is the founder of the gotra. For instance, Angirasa and Brihaspati are Rishis differentiating from Bharadvája, the originator of the gotra; hence it is said: "I am of Angirasa Bárhaspatya, Bharadvája gotra." So should other instances be construed. Gotra, the line of descent, is well known. The bride who is not of the same gotra or pravara as the bridegroom is fit for marriage. In some cases amidst difference of gotra, there is sameness of pravara. For instance, Yájñavalkyas, Vádhúlas and Saunakas who are of different gotras have the same pravara—Bhargava, Veetaharvy, and Savetasa. In the contingency of marriage, among them, to forbid such (inter) marriages, it is said "one who is not of the same ársha (pravara) and gotra." In some cases amidst difference of pravara, there is sameness of gotra. For instance, in "Angirasa, Ambarisha Yauvanasva" and in Mandhatri Ambarisha Yauvanasva, though there is difference of pravara with respect to Angirasa and Mandhatri, the gotra Yauvanasva is the same. Hence, to forbid marriages in such cases (difference of gotra is mentioned). The originators of gotras are chiefly eight Rishis, the seven Rishis with Agastya as the eighth. Thus Baudháyana:—"Jamadagni, Bharadvája, Visvamitra, Atri, Gautama, Vasishtha, Kasyapa and Agastya are Rishis who are authors of gotras." Their offspring are considered to be of their gotras. Of these gotras, the subdivisions are a thousand; but their groups are forty-nine. Thus Baudháyana: "There are thousands, millions and hundreds of millions of gotras; their pravaras are forty-nine as stated by Rishis." The sameness and difference of gotras and pravaras are well known by the works of Baudháyana, Kátyáyana, Visvamitra, Garga and others. Nor should it be suspected that the sameness of gotra and pravara together is the cause of exclusion, for each of them is stated to be blameable. Thus Baudháyana says: "Should he unknowingly marry a female of the same gotra he should maintain her as (his) mother." Also Sátátapa: "Marrying a woman of the same gotra or of the same pravara, one should abandon her, the expiation is taptakrichchra." Ápastamba: "Having married a maiden of the same gotra and pravara, having had connection with her and having raised children on her, one even ceases to be a Bráhmin."

Here Manu says :—"Let a twice-born man, permitted by his Guru, having bathed and returned (from studentship) according to rule, marry a wife of the same caste, having good marks." Also Yájñavalkya: "Let a man who has maintained celibacy inviolate, marry a woman, possessing good marks, who has not previously been another's, is lovely, is an asapiṇḍa, is his junior, is free from disease, has a brother or brothers, and is born of persons whose árṣha and gotra are not the same (as his own)."

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She who has the same pinda, *i.e.*, is of one pinda, is a sapiṇḍa. Asapiṇḍa, *i.e.*, not sapiṇḍa, sapiṇḍaship ends with the seventh generation. Of them, one is the giver of the pinda, and three—father, grandfather and great-grandfather—are the recipients of the pinda; and three beginning with the great-great-grandfather, are the recipients of *lépa* (wipings). So also, in Matsya Puránа—those beginning with the fourth generation are the recipients of *lépa* and those beginning with the father are recipients of pinda; the giver of pinda is the seventh, and (thus) sapiṇḍaship extends over seven generations.

Also Márkaṇḍeya:—"Father, grandfather and great-grandfather, these three persons should be understood to be the participators in pinda, the participators in *lépa* are others—three (generations) beginning with the paternal grandfather's paternal grandfather and the person who offers (pinda) to them is the seventh. This is the relationship extending over seven generations declared by sages." It amounts to saying thus:—The cause of sapiṇḍa relationship is the participation by seven generations in the same pinda offering. For example, Devadatta is connected by sapiṇḍaship with six (generations) beginning with (his) father, and similarly, with six (generations) beginning with (his) son. But if so, there would be no sapiṇḍaship with a brother, a paternal uncle and others, they not being included among those specified. Not so: for what was intended to be spoken about was the sameness of the ceremony in relation to the identical divinity. Some one among those who participate as divinities in the offering made by Devadatta may also participate in offerings made by (Devadatta's) brother, paternal uncle and others; and thus (Devadatta) has sapiṇḍa relationship with them, (his brother, paternal uncle and others). And similarly, for their wives, sapiṇḍaship arises out of their joining as offerers in the pinda oblation offered by their husbands. This is what is (known as) sapiṇḍaship through offerings. But others assert a different sapiṇḍaship. Thus (they say) those who have the same (sa) piṇḍa, *i.e.* member of body, are sapiṇḍas. In that case, the son is a sapiṇḍa of (his) father, because he is directly connected with him by particles of the same body; similarly, of his paternal grandfather and others, being related to them by particles of the same body through the father. Similarly, he is a sapiṇḍa of his mother, being directly connected with her by particles of her body; and of his maternal grandfather and others being con-

nected with them by particles of the body through the mother. And so of his paternal uncle, father's sister and others by particles of the body of the paternal grandfather, and of his mother's sister, maternal uncle and others, by particles of the body of the maternal grandfather, similarly, he is a sapiṇḍa of his wife, as she in conjunction with her husband is the originator of the same body. And to brothers' wives, sapiṇḍaship (arises), they being the originators of the same body in conjunction with their respective husbands. Thus, in other cases, sapiṇḍaship should be determined from connection with the same body either directly or through others.

She who has not this sapiṇḍship of two kinds described (above) is an asapiṇḍa, and such a one should be married. But if this be so, marriage can nowhere take place, for in all cases it will be possible to bring in sapiṇḍa relationship somehow: it being impossible to avoid continuous connection with the creator's body, for the Sruti says: "May I be many." But this is no defect. For the sapiṇḍa relationship which would attach generally has been restricted to five and seven generations, and ceases to exist afterwards. Thus Gautamá says: "Cessation of sapiṇḍaship is at the seventh or the fifth (generation)." Also Yájñavalkya: "Beyond the fifth and the seventh from the mother and the father respectively," adding the words 'sapiṇḍaship ceases,' this should be construed thus: Beyond the fifth generation on the mother's side and the seventh on the father's side, (sapiṇḍaship ceases). For Manu says: "sapiṇḍaship ceases at the seventh generation." This amounts to saying that it is not wrong for a bride or bridegroom to marry beyond seven generations on the father's side, the generation being counted from the original ancestor through his son and so on: and that if on counting the generations on the side of the mother, from the original ancestor through his son and so on, the mother of the bride or bridegroom is the fifth, then the sapiṇḍaship between them ceases and the marriage between them is not wrong. As to the text of Vishṇu Puráṇa:—"O king! let a householder according to the lawful rule, marry a maiden who is the fifth on the mother's side and the seventh on the father's," the words "beyond the fifth and the seventh" should be added. For otherwise it would be contrary to the text: "Beyond the fifth and the seventh" and to the text of Márichi: "They who (go through) the ceremony of marriage in the fifth and seventh (generations), these persons, though devoted to the ceremonial law, become undoubtedly Súdrás." Though Paíthínisí has mentioned two alternative courses, —"Five generations from the mother should be avoided. and seven from the father, or three from the mother and five from the father:" of these the second alternative applies to cases of marriage between different castes. For Sankha says: "If several persons are born of one (man), but of different women, (they) are of different classes, have one pinda, but are of different degrees of purity, but the pinda ceases with three generations." The meaning is this: persons who have a common father, but are born of mothers belonging to different classes, and are themselves of different

classes, owing to the difference (of caste) of the mothers, are nevertheless related to each other as sapiṇḍas, inasmuch as they have a common father, and such sapiṇḍaship ceases after the lapse of three generations. But if this be so, sapiṇḍaship would cease with three generations also on the father's side and it would conflict with the text 'or five from the father.' Then the effect of Paiṭhínisi's text 'three from the mother or five from the father, is to forbid marriage, only between persons of the same class. Or let it be an alternative course.

In (the text): "On the side of the mother and on the side of the father," the word 'father' comprehends also the procreator. Thus Gautama says: "Beyond the seventh from the father's bandhus and the procreator's, and the fifth from the mother's bandhus." He who begets a son by *niyoga* (appointment) is the procreator. Father's and mother's bándhavás are mentioned in another Smriti: "Father's father's sister's sons, Father's mother's sisters' sons, and father's maternal uncles' sons are to be known as the father's bándhavás. Mother's father's sisters' sons, mother's mother's sisters' sons, and mother's maternal uncles' sons are to be known as the mother's bándhavás." But ought not the word 'asapiṇḍa' have been omitted, for the words which follow:—'born of persons whose ársha and gotra are not the same (as his own)': are themselves sufficient to forbid the marriage of a sapiṇḍa (maiden)? True; still it must be said, she alone, who is an asapiṇḍa of (his) mother, is commendable for the purpose of marriage. And so says Manu: "One who is not the mother's sapiṇḍa or father's sagotra, she is commendable for conjugal marriage among the twice-born." One who is not the mother's sapiṇḍa or sagotra, and is not the father's sagotra or sapiṇḍa (this meaning being arrived at) by force of the word *cha*, she is commendable, *i.e.* fit to be married for the twice-born, for purposes of conjugal marriage, *i.e.* marriage by the union of man and woman.

But is not the use of the word 'mothers' in this (text) unnecessary? For, forbidding the sagotras and sapiṇḍas of the father, would by itself have the effect of forbidding the mothers' sagotras and sapiṇḍas also, inasmuch as they (the father and the mother) are not separate in pinda and gotra according to the text: "A woman becomes one with her husband in pinda, gotra and sutaka (pollution), and on marriage, she loses her gotra at the seventh step." Not so. For in the (forms of) marriage beginning with Gándharva, as there is no gift of the maiden, the gotra and pinda of the father do not cease. And so in Márkaṇḍeya Puráṇa: "The funeral cake and water should be offered, as belonging to the husband's gotra, in the case of a maiden married in the forms beginning with the Bráhma, and as belonging to (her) father's gotra in the case of one married in the forms beginning with the Gándharva by one acquainted with the ceremonial law."

4.—Dharmasindhu.

Even admitting that sapiṇḍa relationship is contracted only under some circumstances, and not all, nothing has been laid down as regards which females may be married by which males and which may not. The moderns, such as the author of Sápiṇḍya-dipika and others, however, while admitting that the texts, such as "A person in the fourth or the fifth degree may marry a damsel in the fourth, and in Parásara's view, (a damsel) in the sixth; but never should a man in the fifth degree marry a woman in the fifth," are authentic, state certain rules to be observed under difficult circumstances by the unable. So, (the meaning is) a damsel in the fourth degree may be married by a male in the fourth or the fifth degree. But a damsel in the fourth degree should not be married by a male in the second, third, sixth or other degrees. In Parásara's view, a male in the fifth degree may marry a damsel in the sixth degree. A man in the fifth degree should never marry a woman in the fifth. A damsel in the sixth degree may be married even by a man in the sixth, according to the text 'A man in the sixth degree in the father's or in the mother's line may marry a damsel in the sixth. It is therefore settled that a damsel in the sixth degree should not be married by others than those in the fifth or in the sixth degree. Thus the damsel in the seventh degree on the father's side and the damsel in the fifth degree on the mother's side may be married by persons in the third and the following degrees, according to the text of Vyása: '(A man may marry) also a damsel in the seventh degree on the father's side and a damsel in the fifth degree on the mother's;" and also from the text in the Chaturvimsatimata: "A man should marry a damsel beyond the seventh degree; if none such is available, he may marry a damsel in the seventh degree; in default of even such, a damsel in the fifth may be married; this rule holds good even in the case of damsels related on the father's side." Even on the father's side, a damsel in the fifth degree may be married by men in the third and following degrees; here, even on the mother's side, a damsel in the fifth degree should never be married by a man in the fifth; as it is in all cases prohibited by the text 'the man in the fifth degree should never marry a woman in the fifth." A damsel in the third degree becomes eligible for marriage, according to the text; "One may marry a damsel in the third and fourth degrees on both the sides (*i.e.*, of the father and the mother)." Now rules are laid down in such case. The damsel in the third degree on the mother's side is the mother's brother's or the mother's sister's daughter; and on the father's side, is the father's brother's or the father's sister's daughter. Now, the father's brother's daughter should be omitted, she being a sagotra. Even the daughters of the father's and mother's sisters also should be omitted, owing to the following text of Manu: "A wise man should never take to wife the following three women: the father's sister's daughter, the mother's sister and the mother's sister's daughter."

The meaning of this is that no one should marry the father's sister's daughter, the mother's sister and mother's sister's daughter. Therefore the only damsel that may be married, in the manner already laid down, is the mother's brother's daughter, in case such a marriage is prevalent in the family. Thus the mother's brother's daughter, alone, of the three damsels in the third degree, is eligible for marriage; and (she is to be married) by a man in the third degree alone and not by any other, such as one in the fourth. Some (writers) lay down (the legality of) the marriage of the daughter of the father's sister, contracted in times of distress. In that case the law should be settled by the usage of the country or the family. Now, this is the gist of the conclusions arrived at in the Sápiṇḍya-dipika and other books. The mother's brother's daughter alone (of the four damsels) in the third degree is eligible for marriage; a damsel in the fourth degree should be married only by persons in the fourth or fifth degree; a damsel in the fifth degree is eligible for being married by all persons from the third to the seventh degree, excluding the fifth; a damsel in the sixth degree by males in the fifth and sixth degrees; a damsel in the seventh degree by males in the third degree to the seventh. Such marriages, under restrictions, should be celebrated by one in distress; for it is laid down in texts that the sin incurred by contracting such marriages is similar to that incurred by violation of the teacher's bed; and because the texts laying down such restrictions make it clear that they apply only under difficult circumstances and because it is declared that one will incur sin by following a secondary precept when the primary one may as well be followed, in the text (of Manu): "He who, though able to follow the primary precept, follows the secondary one, does not obtain the fruit thereof."

5.—Nirnaya Sindhu.

Yájñavalkya says: "Let one whose Brahmacharya (life of celibacy) is not lost, marry a woman of good marks, who had not been previously enjoyed by another, who is handsome, who is an asapiṇḍa, and who is younger; who is not suffering from any disease, who has brothers and who does not come of a family descended from the same Rishi and belonging to the same gotra." Of good marks] possessing external and internal good characteristics. External marks, *i.e.*, those well-known in the provinces of Benares, etc. Internal] mentioned by Asvalayana in the text: "Having offered eight rice-balls." Manu says: "A woman who is not a sapiṇḍa of the mother and who is not a sagotra of the father is recommended to men of the regenerate classes for marriage and conjugal union." Asapiṇḍa] not having sapiṇḍa relationship. That is produced by connection through particles of the same body. For the particles of the body of one's father or mother are transmitted, directly or indirectly, in the form of semen virile, blood, etc., to the sons and grandsons. Although this (sapiṇḍa) relationship does not arise between the wife and the husband, and mutually

among brothers' wives, but still as they combine to form the same body or are connected with the same body, they are sapiṇḍas. The Sruti also says: "This body is made up of six sheaths, three derived from the father and three from the mother. Bones, tendons and marrow from the father, and skin, flesh and blood from the mother," and also: "Thou art born again as thy son." Vijñánesvera and others say that the particles of their paternal grandmother are deposited in them by means of her son. The author of the Chandriká, Aparárka, Medhátithi and Mádhava and others, however, say: Sapiṇḍa relationship is the connection in the offering of the oblation to the same person, it being laid down in the Matsya Puráṇa: "The ancestors beginning with the fourth are the partakers of the wipings. The ancestors beginning with the father are the receivers of the oblations. The giver of oblations to them is the seventh. Therefore sapiṇḍa relationship extends to seven degrees." It cannot be said that this relationship does not exist in the case of the paternal uncle, etc.; for there certainly exists that relation as the persons to whom they offer the oblations are the same. If any of the manes in the sráddha performed by Devadatta enters into the sráddha performed by another, then there arises sapiṇḍa relationship between them (*i.e.*, Devadatta and that other); even among their wives (it arises), because of their being associated with their husbands in the sráddha performed by them and because the Sruti says: "She becomes one with her husband in pinda, gotra and pollution;" as the Srutis merely teach abstinence there is no warrant for that being construed as the cause of sapiṇḍa relationship.

It could not be said that this does not exist between maternal uncles (and their nephews); for there is a common ancestor of both in the form of the maternal grandfather. It may be asked: if so, even in the case of the preceptor and the disciple there would arise sapiṇḍa relationship, because of their being one of the manes to whom they should perform sráddhas, and, in short, even the king will become a sapiṇḍa as he has to perform the sráddha (of his subject) according to the text of Márkaṇḍeya Puráṇa: "In default of all, the king shall cause his sráddha to be performed out of his wealth," (we say) true; (but it does not exist in these cases) for according to the text of Yájñavalkya: "After the fifth on the mother's and the seventh from the father's side," that relationship exists only among the relations of the father and the mother. 'Beyond that sapiṇḍa relationship ceases' should be supplied. Therefore they say that even on the mother's side, sapiṇḍa relationship is the connection through the act of offering pinda to the same person. Therefore six ancestors beginning with the father and six descendants beginning with the son become sapiṇḍas. Here some say that only where sapiṇḍa relationship has ceased to exist on both sides, can marriage take place, and not otherwise. Haradatta and others, however, say that sapiṇḍa relationship being correlated to something else like the expression

'of the same gotra', the term 'sapiṇḍa relationship', implying some relation between two implies mutual connection. Therefore if one is not a sapiṇḍa of another, it necessarily follows that that other is not a sapiṇḍa of this one. So, a bridegroom in the eighth degree from the common ancestor may marry brides in the second, third and the following degrees from the common progenitor. But the righteous, however, say that there does not arise sapiṇḍa relationship between the bride and bridegroom of themselves, but only through the sapiṇḍa relationship arising from being the descendants of a common ancestor. Therefore in respect of the bridegroom in the eighth degree, even though the bride is no sapiṇḍa of the bridegroom, yet still as the bridegroom is a sapiṇḍa of the bride's progenitor, he becomes a sapiṇḍa to the bride also, as she is his descendant. Therefore no marriage might take place between them. They say that there is no inconsistency here as the existence and non-existence of sapiṇḍa relationship is correlative to some person. This only is proper. Even as regards impurity, sapiṇḍa relationship should be understood in this manner alone. But even where sapiṇḍa relationship is broken in the middle and is said to continue afterwards like a frog's leap, as where it ceases with the daughters fifth in descent from a common ancestor but is continued in the case of their children, there is nothing wrong even there, because there is a difference of persons related. Therefore marriage between them is not permitted.

Here the enumeration should be made from the progenitor. So has it been laid down: "If the father of the bridegroom or the bride be seventh from the common ancestor and if their mother be fifth, their sapiṇḍa relationship ceases. Progenitor] common ancestor. "Thus, in the manner already laid down, marriage should only be performed beyond the seventh among the bandhus on the father's side and the fifth among the bandhus of the mother. Let the wise man count the degree of the bridegroom and the bride from the common ancestor from whom continuity of the line was broken." Nárada quoted in the Smrititattva says: "A woman who is within seven and five degrees from bandhus on the father's side and the mother's respectively, likewise one who is of the same gotra and pravara, should not be married." Here by the ablative case in 'from bandhus,' it should be understood that a girl seventh in degree from the father's father's sister's son and fifth from the mother's father's sister's son should be avoided (in the matter of marriage). Even in the case of other bandhus also, it should be thus understood that marriage may take place after passing through three gotras or even before it. From the texts to be cited hereafter, it will be found that the calculation of the three gotras is with reference to the gotra of the maternal grandfather and not to one's own. Otherwise, the father's paternal grandfather's daughter's daughter's daughter would become eligible for marriage. The Sambandhatattva and other works say that marriage cannot take place with a woman who has not passed through three gotras, taking

into consideration the gotra of the maternal grandfather of the bridegroom. Súlapání also says in Sambandhaviveka: "A woman who has passed through three gotras may be married, even though she be within the fifth and the seventh degree," for the text of Brihat Manu says: "A woman who is not connected to the mother by oblation or libations of water and who has passed through three gotras, may be married by men of the regenerate classes," and because of the text of Devala: "Marriage may be performed even between nearer degrees if she has passed through three gotras." But this, the Southerners, however, do not consider. As for what Vasishtha says: "The fifth and the seventh from the mother and the father respectively," and as also for the text of Vishnu Purána: "A householder shall marry, O king, a girl who is fifth on the side of the mother and seventh on the side of the father, according to proper rules," these should be commented upon as meaning 'beyond the fifth and the seventh' because of the text of Márichi quoted by Aparárka: "Those who marry the fifth and the seventh are degraded and become Súdrás, even though they perform all karma enjoined." Sankha and Likhita, as quoted in Háralatá, say: "Sapiṇḍa relationship in all classes extends to seven generations; according to gotra. Oblation, libation of water and impurity follow this. The meaning is that sapiṇḍa relationship embraces gotra, lineage and pollution." In Suddhiviveka Bráhma, it is stated: "In all castes, sapiṇḍa relationship should be understood to extend to seven generations; after that, samánodaka relationship commences. The samánodaka relationship ceases when the gotra and the name are no longer known owing to lapse of time." Three degrees beyond the seventh are called sodakas; beyond that, gotrajas. In the same Bráhma, it is also said: "These are declared sapiṇḍas of persons who have not separate wealth." Therefore the meaning is that a separated sapiṇḍa takes the wealth only in default of an unseparated sapiṇḍa; and not otherwise. Thus it is established that sapiṇḍa relationship is of three sorts; *viz.* with regard to marriage, pollution and taking of wealth.

Because in the text of Paíthínisi: "Avoid the five on the mother's side and the seven on the father's; or three on the mother's and five on the father's," here, "three", etc., indicates only a secondary precept, as Mádhava says, and because of the text of Chathurvimsatimata: "The fifth and the seventh on the mother's and father's side respectively should be avoided. In a family of learned Srotriyas renowned to ten generations, one may marry a woman beyond the seventh degree, or, on default of such, one in the seventh degree: or, in default of even this, one in the fifth. This rule applies to the father's side also. Sákatáyana declares that no sin is incurred by one marrying a girl in the seventh, the sixth and the fifth degrees under such circumstances. One may marry a girl in the third or the fourth degree on either side; so say Manu, son of Parásara, Angiras and Yama. But he who marries according to the usage of his country and of his family

will always be fit for social intercourse; so says the Veda" and from the text of Parásara: "One in the fourth or fifth degree may marry a damsel in the fourth; or the sixth in Parásara's view; but never should a man in the fifth marry a woman in the fifth", it is understood that the marriage of a woman in the fifth degree, etc., may secondarily be performed only during distress; the precept being only a secondary one; for here the use of the term 'on default of her' makes it clear that this is only a secondary precept. Here we must follow the Srutis,; for fear of contradiction with the text of Márichi already cited, and because a thing cannot both be and not be; for Vishnu says: "A twice-born man marrying a girl in the fifth or seventh degree should be known to have committed the crime of violating his preceptor's bed; as also he who marries one of the same gotra", and also because the text of Parásara is unauthentic. Therefore the aforesaid texts should be construed to refer, according to the suggestion in the Madana Párijáta and other works, to the subject of the intervention of the adopted son and the stepmother, etc., or of the sapinda relationship of the Bráhmins and the Kshatriyás. Nor should it be misconstrued as a secondary precept. Smritichandriká and Mádhava say "those in the third degree and those in the fourth". The Sátápatha Sruti says: "This woman, the father's sister's daughter is thy share" From the text of Sátátapa, "Some people in some countries narrow the scope of sapinda relationship by marrying their mother's sister's daughters and father's sister's daughters likewise," the marriage of the maternal uncle's daughter becomes proper. Although it is now obtained that the father's sister's daughter may be married, yet still, it should not be performed, as it is prohibited in another text: "One should not practise what is abhorred by the world, (even though it is lawful) as it leads not to Heaven;" but it may be urged that it may be done, as the righteous men of the South do it. Nor can it be said that the texts previously quoted are simply eulogistic, this being not contradicted by any other authority as in the case of the text 'upari hi, etc.,' this cannot be merely eulogistic but is an injunction. As for what Sátátapa says: "One should, after rejecting the maternal uncle's daughter, a woman of the mother's gotra likewise and who has the same pravara should perform 'chándráyana' penance," and as also for what Manu says: "He who has approached the daughter of a father's sister, (equal to) a sister, the daughter of his mother's sister, or of his mother's full brother, shall perform chándráyana. A wise man shall not take these three for wife," and as for what Vyása also says: "The sapindas of the mother should be carefully avoided by the twice-born," that refers to the mother married in the Gándharva and other forms of marriage; for there the father's gotra does not cease. Hence alone, Márkandeya Purána declares: "In the Gándharva and other forms of marriage, married women retain the gotra of the father. But in the Bráhma and other forms of marriage, she certainly retains the husband's gotra." Bhatta Somesvara, regarding the subject of marrying the maternal uncle's

daughter, says that though the Srutis are against it, it may be done because of the superior authority of the indications in the Srutis. This, as it refers to the daughter of the brother of the foster or adoptive mother of the adopted son, and to the daughter of the maternal uncle of a different caste, and as it is applicable to another Yuga, is evidently sound. But still it is prohibited in the Kali Yuga; for the Áditya Purána says: "Marriage in the same gotra and of the mother's sapiṇḍas, and also the killing of a cow, (are prohibited in Kali age.") In the Mádhavíya, Baudháyana also censures this: "There are five deviations from law in the South. We shall now speak of the five in the North. They are: dealing in wool, eating along with women, taking stale food, and marrying the maternal uncle's daughter and father's sister's daughter." Bhatta Someśvara has shown the invalidity of the marriage of maternal uncle's daughter and the like, which are opposed to Sruti. Brihaspati also declares its being opposed to the conduct of the righteous: "Daughters of maternal uncles are married by the twice-born in the South. In the East, men eat fish and women delight in incontinence. In the North, women drink wine, and a *rajasvalá* (a menstruating female) is touched by men." Hence alone the text of Matsya Purána cited in Hemádri says: "The people of the Karnatic, etc., performing it, are excluded from sráddhas." A Bráhman has also been written by Vopadeva: "Bráhmins should not attend sráddhas performed by a person who has married his maternal uncle's daughter or who is the husband of a *vrishali*; likewise sráddhas where flesh is not used." Therefore it is established that one should avoid the five from the mother and seven from the father. In the Sambandhaviveka, Sumantu says: "Among Bráhmins connected by the same pinda, connection by religious duties ceases with the tenth degree. After the seventh, the right of succession to property ceases: and after the third, the duty of offering pinda ceases; if otherwise, one ceases to offer pinda or observe impurity, he becomes equal to the murderer of a Bráhmin." Súlapáni thus lays down its meaning: "The three ancestors beginning with the great-great-grandfather of one whose father is alive are the receivers of the oblations, since they are the persons to whom the sráddha is addressed. Ancestors beyond them up to the ninth are the partakers of the wipings. The performer of the sráddha is the tenth; thus after the tenth, sapiṇḍa relationship ceases." 'After the tenth' is illustrative. By that, it should be understood that during the lifetime of the father and grandfather, sapiṇḍa relationship continues to the ninth degree. In default of nearer relations, ancestors up to the seventh are entitled to take the property of a sonless man. The third in degree from the inheritor is the grandson. After him, the sráddha ceases. The meaning is: otherwise, if one takes the wealth but does not perform the sráddha, etc., of the issueless deceased, he becomes (equal to) the murderer of a Bráhmin. 'To the third' refers to the unmarried girl; for Vasishtha says: "In the case of unmarried women, sapiṇḍa relationship should be known to extend to three generations." This sapiṇḍa relationship

is with reference to impurity and not to marriage, etc. On that subject, Medhátithi and other Southerners say that it is because of the rules previously laid down of seven and five degrees, Suddhivivéka says that this applies only after the damsel is betrothed. This also has reference to the mother's family. Smritittattva, Ratnákara, and other Gauda works say that otherwise there would be contradiction with the text of the Kurma Purána: "The sapiṇḍa relationship of unmarried women likewise extends to seven degrees; of married women, the sapiṇḍa relationship of their husbands, thus Prajápati says." This is but proper; otherwise on the occasion of the birth of a daughter, pollution will attach to persons within three degrees only and not beyond that. With reference to the family of the father of the stepmother, there is this text of Sankha cited in the Mitákshará: "Among sons born of the same man by different wives, and who have separate relations, who have the same pinda, pinda lasts to three degrees." By different wives] begotten on women of different castes. Having separate relatives] born of different women of the same caste. Here Vijñánesvara explains that the sapiṇḍa relationship extends to three degrees. The Prithvichandrodaya and Sápiṇḍyadipika also are to the same effect. But it is thus commented on in the Madana Párijáta. Of different wives] sprung from different wives. Prithakjanáh] of different castes. In the family of the mother of the stepmother of a twice-born class, the sapiṇḍa relationship of these extends to four degrees. The term 'to the seventh' occurring in 'the fifth and the seventh on the father's and mother's side respectively,' refers to the father's family of the son begotten by a Bráhmin and the rest on wives of the Kshatriyá and other classes. But this being the creation of his own imagination and being contradictory to other works, has no foundation; and because Sumantu, after stating that all the wives of the father are mothers, separately lays down the prohibition of the marriage of the stepmother's relatives; thus: "Her brothers are maternal uncles; her sisters, mother's sisters; her daughters, sisters; the issue of these, sisters' issue." Otherwise the mention of the maternal uncle, etc., would become redundant, for it is already prohibited, they being sapiṇḍas. Hence alone it was explained by him in the Smritikaumudi that it refers to the family of the father of the step-mother, where she is of the same caste. Therefore the text of Vasishtha should be explained as 'beyond the seventh.' Therefore the interpretation put upon it by the Easterns alone is correct. It has been stated by the author of the Prayogaratna, and in the Smritittattva and other Gauda works that only so much sapiṇḍa relationship exists in the family of the father of the stepmother as has been laid down already. So Sumantu says: "The relations of the mother and the father should not be married up to the seventh degree; and others up to the fifth. All the wives of the father are mothers; their brothers, maternal uncles; their sisters, mother's sisters; the daughters of these, sisters; the issue of these, sisters' issue; (therefore these should not be married). Otherwise they would be making unlawful intermarriages. Likewise in the family

of the preceptor also." The Easterns say that 'up to the fifth' refers to those in the father's family who have passed through three gotras. In the Matsya Purána also it is stated: "A woman of the same pravara, the descendants of the disciple, and the issue of the teacher of the Vedas or the preceptor are prohibited." 'Their sisters, mother's sisters'; this, however, is not read in the Ákara.

Thus in the Grihya Parisishtha, after stating that these are not improper connections, the prohibited connections are also laid down: "Thus, the wife's sister's daughter, and paternal uncle's wife's sister." Baudháyana also says: "One should avoid in marriage one's mother's co-wife's sister and her daughters, paternal uncle's wife's sister and her daughter." Therefore even the mother's sister's co-wife's daughter too should not be married, because, some say, of what is stated in Madana Párijáta, *viz.*, it is the family of the stepmother." Some others quote the text of Manu: "The elder brother is equal to the father," and say that as his wife is equal to his mother and consequently her father being equal to the maternal grandfather, the elder brother's wife's sister should not be married. Similarly, they say, there is sapiṇḍa relationship between the pupil and the preceptor to three degrees; for Manu says: "Of the father who gives birth and of the father who gives spiritual knowledge, the father who imparts knowledge is superior." Therefore, their daughter should not be married. For the text says: "The daughter of one who teaches the Gayatri, a twice-born man should not marry; or the daughter of the preceptor, the disciple. This should not be done within three degrees, even by brothers, etc." Here the authority should be considered.

As regards the adopted son. On this subject, Gautama: "Beyond the seventh among the relations of the father, and also on the side of the begetter and beyond the fifth among the relatives of the mother." Here by the use of the term 'bandhus' it is indicated that this refers not only to the adopted son but also to his issue. Haradatta says that this applies to all the dvyámushyayáṇas from the kshetraja downwards. On this subject, Smritichandriká says: "The meaning is 'beyond the seventh on the side of him who begot him by niyoga.'" In the Sapiṇḍya Mimámsá it is stated that this refers to the procreator. Thus, the sapiṇḍa relationship of the adopted son in the family of the procreator extends to seven degrees and in the family of his mother, to five; for Brihat Manu declares: "The sapiṇḍa relationship of the adopted son, the son bought and the rest is through their procreator, and extends to seven and five degrees; and they belong to the gotra of the adoptive father." By the expression 'on the side of the begetter also' in Gautama's text, it should be understood that it extends to five degrees on the side of the protecting father and to three degrees on the side of the protecting mother. So also Paíthínisi, quoted in Aparárka says: "One should marry beyond three degrees on the mother's side, and five on the

father's side." He himself explains it thus: This refers to the adopted and other sons whose pinda, gotra and ársha on the procreator's side have ceased, and not to others. This is also stated by Vriddha Gautama: "The adopted son, the son bought, and the rest who are made sons in their own gotras, retain the gotra (of the adopter); but no sapiṇḍa relationship has been declared (in the family of the adopter)"; and by Vasishṭha: "The adopted son who belongs to, and is initiated in, his own sákhá, takes the sákhá of the adopter"; and also by Nárada: "When children are brought up as sons for religious duties, then sapiṇḍa relationship with the protector extends to seven degrees." These intend to lay down that there is no sapiṇḍa relationship extending to seven degrees in the family of the protector and not to lay down that there is no sapiṇḍa relationship whatever under any circumstances. So says the Sápiṇḍya Mimámsá. Even from the Madana Párijáta, it appears that there is only some little sapiṇḍa relationship where an adpoted son intervenes; for quoting the text 'after the third degree, etc.,' it explains the expression as meaning 'beyond three degrees in the line from the person who made the mother of the adopted boy his appointed daughter.'

'Five on the father's side'] this has been stated to refer to the family of the father of the person to whom he is given in adoption. But as a matter of fact, as the texts already cited are not to be found in authoritative books, as they are not quoted by Aparárka and others, and as the conclusion previously arrived at is consistent only with superficial knowledge, this view can please only those who have written thus. My opinion, however, is that sapiṇḍa relationship, consisting in the offering of oblation to the same person, extends certainly to seven degrees in the family of the protector. The expression 'on the side of the begetter also' in the text of Gautama means that sapiṇḍa relationship extends to the same degree as in the case of the father. The term 'three on the mother's side,' however, refers to the family of the stepmother. Hence alone is he described by Hemádri, author of the Manjarivritti, Narayana and others as son of two fathers; and also by Bhatta Somesvara thus: "Even when Pritha was the protected daughter of Kunti Bhoja, her sapiṇḍa relationship to seven degrees in the family of her father Surasena has been declared, as Gautama says: "Beyond the seventh among the relatives on the father's side and on the side of the begetter." The Sápiṇḍyadipika, however, says: "Where the upanayana of the son adopted and the rest is performed in the father's family, then their sapiṇḍa relationship extends to seven degrees in the family of the father; and in the protective father's and mother's family, to three degrees, on account of the presenting of the oblations; the presenting of oblations indicates that sapiṇḍa relationship extends to three degrees. Where their upanayana was performed in the gotra of the protective fathers, sapiṇḍa relationship extends to seven degrees in their family. But that is not sound; as none could be given in adoption

after his upanayana; for the Káliká Purána says: "Sons given and the rest, when the ceremonies of tonsure and the like have been performed on them in the adopter's own family are deemed adopted sons; any other is called a slave." 'Three degrees'; here also the source should be found out. No use of dilating. This enumeration refers to damsels whose sapiṇḍa relationship arises through their mother and father. This is common to all the castes; as Vijñánesvara says that sapiṇḍa relationship exists in all the castes, and because of the text of Devala cited by Haranátha; "Sapiṇḍa relationship ceases after the fifth and the seventh from the mother and the father respectively; this rule extends to all classes." Sumantu quoted in the Sambandhatattva says: "Having married the father's sister's daughter, mother's sister's daughter, maternal uncle's daughter, a damsel of the same gotra with the mother, and one descended from the same Rishi, one should perform chándráyana penance. Having renounced them, he should support them as his mother."

6.—Samskara Kaustubha.

Gautama says: "Beyond the seventh among the relatives on the father's side, and also on the side of the begetter, and beyond the fifth on the side of the mother." It is also said: "The daughter of Vasudeva is not permitted to the son of Kunti." While commenting on the Vártikas, the author of the Nyáyasudhá, after stating that this is applicable to the adopted son, adds that the sapiṇḍa relationship of Kunti in the family of her father extends to seven degrees. On the same subject, it is stated in the Sápiṇḍya Mimámsá: "Therefore it is to be understood that sapiṇḍa relationship extends to seven degrees in both families." Paithínisi, however, says: 'Three on the mother's side and five on the father's; one should marry beyond seven degrees." "Five on the father's side" and this has been commented upon by Aparárka that it applies to the adopted and other sons whose pinda, gotra and ársha have ceased in the family of their father. The Ancients say that it is to be inferred that sapiṇḍa relationship extends to seven degrees on the side of the adoptive father and to three degrees in the families of the mother and the father of the adopter. The conclusion is laid down in Sápiṇḍyadipika: "If the upanayana of the adopted and the other sons had been performed in the gotra of the father, their sapiṇḍa relationship in the family of the father extends to seven degrees; the sapiṇḍa relationship consisting in the offering of oblations in the family of the adoptive father and mother extends to three generations. If the upanayana had been performed in the gotra of the adopter, the sapiṇḍa relationship extends to seven degrees. The text of Paíthínísí: "If the upanayana only had been performed, to five degrees; if all the ceremonies from játakarma to upanayana had been performed, to seven degrees" must be thus construed to give effect to both texts.

This statement as to sapiṇḍa relationship is for the purpose of the marriage of not only the adopted and other sons but also for determining (the legality of) connections with their issue and other persons belonging to the family of their father, etc. The determination of the sapiṇḍa relationship of the adopted son applies also to his issue. Hence alone, what is stated in the Madana Párijáta: "The sapiṇḍa relationship of the son of the appointed daughter in the family of the mother of the adopter of his mother extends to three degrees; of the son of adopted son in the family of his father is five degrees" should be commented upon as applicable to the issue of the adopted son, as already laid down.

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7 and 8 Samskara Mayukha and Samskara Bhaskara.

These only repeat what already appears in the Appendix on this subject.

9.—Madana Parijata.

Now, some describe sapiṇḍa relationship thus: it is the connection, set up in the act of one's offering rice-balls, of the propositus as the giver, of the father, grandfather and the great-grandfather (of the propositus) as the persons to whom the rice-ball is offered, of the father, grandfather and the great-grandfather of the great-grandfather as the patakers of the wipings of the oblation, of the wives of the propositus, as performing the oblation jointly with their husband, and as producing the same body, of the wives of brothers (of the propositus) as mutually producing the same body, thus (the relation) between the propositus and his ancestors to the seventh degree, some of them being the persons to whom the rice-ball is offered and some others being the persons partaking of the wipings.

They also cite the text of the Matsya Purána (in favour of their position) as to the sapiṇḍa relation of the giver, etc.: "Ancestors beginning from the fourth in ascent are partakers of the wipings of oblations; those beginning with the father are the receivers of the oblations; the seventh in degree is the giver of the oblation; (therefore) sapiṇḍa relationship extends to seven degrees." Here, they should be asked the question whether fewness of assumptions or multiplicity of assumptions is preferable. If (it be answered that) multiplicity of assumptions is preferable, then the abovementioned rules alone hold good in the interpretation of the word "sapiṇḍa."

If fewness of assumptions is preferable, then we say thus. A sapiṇḍa is one who has the same body. Such relation is sapiṇḍa relation. Such relation is produced in sons, etc., by connection

through particles of the same body, and in wives, etc., and brothers' wives, etc., by being united in the act with persons connected by particles of the same body. Thus, only three principles are accepted in the interpretation of the word. Then you think thus: that there is no multiplicity of assumptions, seeing that there are only two principles, *viz.*, connection in the act of offering the same rice-ball, and connection with persons who are connected in the act of offering the same rice-ball. (If you say so) then on our side also, there is fewness of assumptions, as there is only one principle employed; and that is, connection through particles of the same body; and this connection by particles is in the case of the father, etc., direct and in the case of the wife, etc., is direct or indirect. Thus there is fewness of assumptions, there being only one principle.

Multiplicity of assumptions is censured by Áchárya: "We prefer that alternative which requires fewer assumptions. Let that be well-established of either." Thus argued, this word is a proper name though it has a meaning, like the word *pankaja* (lotus).

Connection through particles of the body is also heard of in the Sruti: "One is born of oneself"; and also "you are born as your issue." Likewise in the Garbhopanishad: "This body is made of six sheaths, three (inherited) from the father and three from the mother; bone, tendon and marrow from the father, and skin, flesh and blood from the mother."

Ápastamba also: "The same man born of himself becomes a separate object of perception."

This is, however, the meaning of the text of Matsya Puráṇa: Ancestors from the fourth are the partakers of the wipings; the fourth is the great-great-grandfather (of the propositus); the three ancestors from the great-grandfather are the partakers of the wipings, *i.e.*, receive the wipings of the hand of their descendant offering the rice-ball. Those beginning from the father are sharers of the rice-ball (*i.e.*, are the persons to whom the rice-ball is offered). The seventh is the giver of the pinda] he who offers the rice-ball to them is the seventh in degree. Sapiṇḍa relationship extends to seven degrees. It is in effect said that sapiṇḍa relationship covers these seven persons. If it is asked if partaking of the wipings, etc., spoken of before, are not sources of sapiṇḍa relationship, we say no; for then the fault of multiplicity of assumptions before spoken of will result. Therefore what we said is alone proper.

On the question of the extent and nature of sapiṇḍa relationship, *vide* also pp. 47, 48, 101, 183, 295, 296 and 335 of Vol. I, and pp. 99, 100, 285, and 302 of Vol. II.

APPENDIX B.

THE ORDER OF PERSONS BOUND TO PERFORM THE FUNERAL RITES OF THE DECEASED.

VAIDYANATHA DIKSHITIYAM.

Sumantu thus mentions the persons bound to perform the funeral rites, such as cremation, etc.:—"The aurasa son should zealously perform the obsequial rites of his deceased mother and father with proper mantras." Jamadagni thus lays down the manner of performing the obsequies when the son is unable to perform them. "The offering of rice-balls and libations of water to the deceased father must be performed by the son. Even if unable, the son must do the cremation and somebody else must complete the rest." If there be a number of aurasa sons, the eldest alone should perform the obsequial rites of the father. "Whatever is done by the eldest, not divided in respect of property, with the consent of all the rest, shall be deemed to be done by all of them." So says the text. Another Smriti says: "The navasráddhas, the sapiṇḍíkarana, and the shodasa sráddhas must all be performed by one and the same person, although they are all divided from one another." The Chandriká says.—"The aurasa son alone should do the cremation, etc. Where the sons are many, the best of them in quality should do it; but if of the same quality, the eldest alone should do it." But Rishyasringa says: "Of the sons, whoever is the most beloved of the father, whether he be intermediate, youngest or eldest, all (funeral rites) must be done by him alone. Where all the sons were hated by their deceased father, his wife, the brother, the daughter, even a friend, etc., should perform the cremation, and other funeral rites of the deceased."

Jamadagni says: "The cremation, the offering of rice-balls and libations of water must be performed by the eldest son. If unable to do them himself, he must have them all done by another." *Commentary*:—If the eldest of all the sons is unable, or not near at hand, the eldest among the sons present at the spot must do all these; for the Srutis say:—'The eldest by birth must perform the father's obsequies.' Some say that the expression 'eldest by birth' bears a different construction. If there are a number of sons born of different mothers, he alone who is the eldest by birth must perform the father's obsequies and not the son of the first wife; for all texts contain the expression 'eldest by birth.' Manu says: "Of the sons, and especially those born of wives of the same caste, the fact who is the eldest is determined with regard to the time of birth and not to the order of their mothers. Even the holy books call him eldest, who is born first."

Another Smriti, however says: "Whether the eldest or the youngest, the son of the first wife should perform the cremation of the (father's) corpse. As cremation is the most important of the rites, the son of the first wife should be held the eldest." Another Smriti says: "If a person has two wives and sons, the same man should perform the obsequies of both. In the event of the death of the father, the son of the first wife should be regarded as the eldest son." *Commentary*:—The expression 'the son of the first wife' means 'the son of the wife highest in rank, *i.e.*, the son of the wife of the same caste'; for otherwise there will be a conflict with the text of Manu, 'of sons of the wives of the same caste, etc.' Accordingly, Baudháyana also says that the son born of the wife of the same caste is alone competent to discharge the obligation incurred by his father, etc. "Let a man, having controlled his senses, beget children on wives of his own caste. Having propitiated the Rishis by studying the Vedas, Indra by sacrifice, and the manes by his sons, he rejoices in Heaven freed from all obligation." *Commentary*:—The eldest aurasa son by another wife should perform the obsequies of the father alone and not that of his stepmother, being born of another womb. The son, though the youngest, must himself perform the obsequies of his own mother; for the Smriti says: "The aurasa and the kshetraja sons must perform the obsequies of their mother, and in their absence, sons born of her co-wife." The Smritiratna says that, even where there is a son by a co-wife, the husband alone should perform the cremation and other rites. "Where of wives of the same husband, one dies sonless, the husband alone should perform the funeral rites even where another wife has male issue. In the absence of the husband, the son by the co-wife is certainly bound (to perform the rites), and in his absence his sons, and of them the one present at the spot is preferred to those absent." *Commentary*:—This rule of preferring the husband to the son of a co-wife applies to cases where there is stridhana to be inherited. Otherwise, it is said, the son of a co-wife alone should perform the funeral rites. In the matter of inheritance, Manu says: "Where the marriage is of the Bráhma, the Daiva, the Ársha, the Gándharva, or the Prájápatya form and the woman dies childless, the husband alone takes her property." Yájñavalkya also says: "The stridhana of a childless woman goes to her husband, where she has been married in the first four forms, such as Bráhma, etc. If married in the other four forms, it goes to the husband where he has only daughters." *Commentary*:—Kátyáyana says that where the marriage has been in the Ásura, and the following forms, and where there is no property to be inherited, the son of the co-wife is the first to perform the rites. "The aurasa son must perform the funeral rites of his own mother, and in his absence, the son of the co-wife and other sons, kshetraja, etc. In the absence of them all, the husband, and in his absence, the sapiṇḍas must perform the funeral rites of the deceased woman." Another Smriti says: "The son of the co-wife, the kshetraja son, other sons, and the husband should perform the funeral rites of the

deceased sonless woman, every one in the absence of all mentioned before him." Manu also says: "If, among several wives of the same man, one is the mother of a son, then, according to Manu, all these wives are mothers by that son." Brihaspati also says: "This is the rule in respect of several wives of the same husband—if among them one is the mother of a son, that son is the giver of the pinda to them all." Gautama also says: "All the wives of the father are mothers." *Commentary*:—Some maintain that the texts, "though another has a son, still the husband alone should perform the obsequies, etc.," apply in the case of a wife of a different caste, and that the texts 'the aurasa son born of her should perform', etc., are intended to show that the son of the co-wife should be perferred, and apply in the case of wives of the same caste. Others, on the other hand, contend that, as there is no clear and direct authority upon this point, the determination of the order must depend, according to the text 'he should perform who takes the property,' on the fact of inheriting property or otherwise. Others yet contend that, as the text 'aputrává', etc., applies only to cases of women having no issue of their own, and that there is no reason for preferring the son of the co-wife while there are grandsons, etc., of the deceased woman entitled to take her property, considering the Smriti which says that he who takes the property is the giver of the pinda to the deceased. This is said also in another Smriti, "Although the co-wife has a son, the husband should perform the funeral rites of his sonless wife. In the absence of the daughter's son and the husband, the son of the co-wife should perform them." *Commentary*:—The meaning of this is that in the absence of the husband and the daughter's son, who would inherit her property, the son of the co-wife should perform them. This rule applies where there has been a partition. If undivided, the son of the co-wife certainly takes precedence over the daughter's son. In the absence of the son, etc., the husband should perform the wife's obsequies; and in his absence, the daughter. On this point, Sankha says: "In the absence of sons, the husband and the wife should each perform the other's obsequies. Where one has a daughter but no son, she alone should give the pinda." *Commentary*:—The meaning is that in the absence of the husband, the daughter should perform the mother's obsequies; and in the absence of the wife, the daughter should perform the father's obsequies. The daughter's right to inherit her father's property is thus spoken of by Devala: "The daughter virtuously begotten inherits, like the son, the property of her sonless father." *Commentary*:—The daughter, married and unmarried. Another Smriti says: "As is one's self, so is one's son. The daughter is equal to the son. While she, his atman, lives, how can another take his wealth?" On this point some contend that from the Smriti which says: "The son must perform the father's sráddha, and in his absence, the wife, next the daughter's son who takes the property, and after him, the brother and his son," and from the order of persons entitled to inherit laid down in the Smriti: "The wife and the daughter, the parents and

the brothers accordingly", the wife and the daughters take precedence over the daughter's son. But others maintain that the daughter's son takes precedence over the wife and the daughter, on the strength of Vishṇu Smriti which says that the daughter's sons should be regarded as son's sons and on the strength of custom observed by wise men. In the absence of the daughter, the brother, etc., is the performer (of the obsequies). "The brother born of the same mother and his sons should perform the obsequies of the deceased brother. In the absence of these, the brother born of a different mother, and in his absence, his son should perform the same." Another Smriti says: "Of the wife, the brother, his son, the father, the mother, the daughter-in-law, sister, the nephew, the sapiṇḍas and the sodakas, the one subsequently named is, in the absence of all previsusly named, according to the Srutis, the giver of the pinda." Vishṇu Purána also says: "The son, the brother, his son, the wife, the mother, the father and the disciple, even in the absence of property, should perform the funeral rites of the deceased." However a text of Manu says that if among several brothers of the whole blood, one has a son, then all those brothers are, according to Manu, fathers by virtue of that son. This text has been commented upon by Vijñánesvara and others, as laying down, not that the brother's son takes precedence over the brother, but that while there are sons of brothers, none else should be adopted as a son. Some contend that on the strength of Kátyáyana's text: "Of the sonless man, his wife of good family, or daughters, and in their absence, the father, the mother, the brother and his sons are mentioned (as heirs)", and of the Smriti laying down the order of heirs as "the wife, the daughters, the parents and the brothers," the parents take precedence over brothers, etc. Others maintain on the strength of a number of texts already cited, such as 'the wife, the brother, his son, the father, the mother', etc., the brothers, etc., are entitled to precedence over the parents. But there is the text of Baudháyana which says: "Neither the mother nor the father should perform the funeral rites of the son. Nor the elder of several brothers, the funeral rites of the younger." There is also the text of Kátyáyana which says: "The father should under no circumstances perform the sráddha of his sons; nor the elder brother, of his younger brothers." Another Smriti also says: "The father should not perform the sráddha of the son, nor the elder brother, of the younger." All these texts apply to cases where the person primarily bound to perform the sráddha, such as the son, the younger brother, etc., is alive; or they may apply also to cases where the person so bound to perform bears no good will to the deceased. Accordingly, Baudháyana and Devala say: "The funeral rites of the father must be performed by the son, and of the brothers, by the younger. The sister's sons may also perform the funeral rites of the maternal uncle dying without male issue. The father should not perform the funeral rites of the son, nor the elder brother of the younger. It they do it out of affection, they may do all but the sapiṇḍíkarana rite." The Sangrahakára says that if

there be nobody else to perform (even this sapiṇḍíkarana) should be performed by them. "In the absence of any one else, even the father, the mother and the elder brother should perform the sapiṇḍikarana." Another Smriti also says: "In the absence of all others, even the father or even the elder brother should perform the obsequies. The elder brother should do so especially at Gaya." The Smritisárasamuchchaya thus lays down the sin attaching to the omission so to perform: "The father, the elder brother or even the mother must perform the funeral rites of a person who died leaving no other relatives. Otherwise great sin will be the result." This indicates that where the father and the elder brother are both alive, the father being the nearer must perform the funeral rites, and in his absence the younger brother. When there are many younger brothers of the deceased, the next younger brother and not one more remote should perform the funeral rites; for Manu and others say: "He who is the nearest sapiṇḍa, etc." The Smritiratna says that while the father is alive, one should have the obsequies of brothers, etc., performed by some other person. "The rules in reference to the dead body, the sapiṇḍíkarana, and the anniversary of the brother, etc., must be performed by some other while one's father is alive." The order accordingly is:—the father and the mother in the absence of the brother and his son, the daughter-in-law in the absence of the mother and the father; in her absence, the sister, younger or elder; in their absence, their sons; in the absence of the sister by the same mother, the sister by a different mother; in her absence, her son; next the sapiṇḍas; next the samánodakas; after them, the sapiṇḍas of the mother; after them, the samánodakas of the mother; in their absence, the sagotras; next the disciple; in his absence, the ritwik; after him, the preceptor; in his absence, the son-in-law; and in his absence, a friend.

APPENDIX C.

IMPURITY.

VAIDYANATHA DIKSHITIYAM.

On this subject, Sankha says;—"While impurity lasts, one should abandon gifts, acceptance of gifts, homa, study of the Vedas, duty to the manes and the offering of oblations to the deceased." The meaning of the word 'impurity' is (thus) laid down in the Smriti Chandriká; "By the word 'impurity' should be understood that blemish or sin which on the occasion of the birth or death of one's sapiṇḍas, renders one unfit to perform gifts and other acts."

Daksha enumerates the different kinds of impurity:—"That lasting until bathing, that lasting one day, three or four days, also six, ten and twelve days, a fortnight, or a month."

Yájñavalkya lays down where impurity lasts till bathing:—"Impurity is declared to last till bathing in the case of ritwiks, of sacrificers, of those engaged in sacrificial rites, of those who give food to travellers, of those who have commenced any rites, of donors of gifts and of persons who have realised Brahman; and on occasions of gift, marriage, sacrifice, battle, when the country is overtaken by a calamity and in great distress." Impurity lasting till bathing] pollution attaching to one only until he bathes; according to the text of Angiras:—"The pollution of a man to be purified by bath continues till the relatives of the deceased bathe with their clothes."

Parásara says:—"Impurity is declared to last only till bathing in cases of death from falling from a great height, of death from fire or of death in a foreign country; as also if a child or a sanyásin dies."

If a sanyásin dies, his sapiṇḍas become pure by bathing. On this subject, Vyása says:—"No impurity is laid down by the virtuous, for permanent students, hermits, ascetics and Brahmacharins; so also if an outcast dies."

It is stated in Sangraha:—"The mother-in-law, the father-in-law, the brother-in-law, the preceptor, his son, the ritwik, and the purohit will be purified after bath in the case of the death of those to whom they are so related, (*i.e.* son-in-law, etc.).

Vriddha Yájñavalkya says:—"One becomes pure by bathing, if one's friend, one's son-in-law, daughter's son, sister's son, wife's brother or his son dies." In the case of the death of a friend, impurity lasts till bathing, only if not present at the death. But if he is present at the death, one day's pollution is laid down. Impurity lasts till bathing, in the case of the death of the daughter's son and sister's son, if they reside in foreign countries and if they are not

initiated; because pollution for a day and a half is ordained if they were living near. The brother-in-law should bathe, if not near.

Parásara says:—"Impurity is declared to last only till bathing, in cases of deaths during famine, or when the country is overwhelmed by calamities."

The meaning is that if one dies during famine or when the country is in a state of agitation, his sapiṇḍas become purified by bathing.

On the subject of (impurity consequent on) suicides committed voluntarily, Parásara says:—"If a child, a person residing in a foreign country, or an outcast or an ascetic dies, impurity lasts only till bathing; so also if one voluntarily commits suicide by drowning, by burning or by hanging from a height".

Parásara lays down pollution attaching to the mother consequent on miscarriage, etc:—"If miscarriage or abortion occurs, the mother has pollution for as many days as the months of pregnancy." The meaning is that if miscarriage or abortion takes place, the mother should observe pollution for as many days as the months of pregnancy. If this, however, occurs between the fourth and the seventh months, the pollution lasts three nights. The same author lays down the distinction between miscarriage (*srava*) and abortion (*páta*):—"Miscarriage will occur within the fourth month of pregnancy and abortion in the fifth and sixth months. In case of delivery after the seventh month, birth pollution lasts for ten days." The meaning is that if a mother is confined after the seventh month, the mother has birth pollution for ten days. Yájñavalkya says:—"Impurity arising to the mother for miscarriage terminates after the lapse of as many nights as the months of pregnancy."

Daksha lays down pollution for the different castes: "A Bráhmin becomes purified in ten days, a Kshatriyá in twelve days, a Vaisyá in fifteen days and a Súdrá in a month." Yájñavalkya also says:—"A Kshatriyá should observe impurity for twelve days, a Vaisyá for fifteen days, a Súdrá for a month, but a virtuous one, for fifteen days." Virtuous] who is intent on serving the twice-born.

Manu lays down impurity in the case of samánodakas:—"Samánodakas are said to become purified, in three days, of birth pollution." Parásara says:—"Bráhmins become purified of death pollution in three days." "Bráhmins": after this "samánodakas" is understood. So also Jábáli says:—"Sapiṇḍas are declared to become purified in ten days: samánodakas in three and gotrajas in one day." Devala says:—"Three days have been laid down for samánodakas and one for gotrajas." Brihaspati also says:—"Sapiṇḍas become purified of death pollution in ten days, sakulyas in three and gotrajas by bathing." Sakulyas] samánodakas. The bathing said down refers to death pollution; for on occasions of birth, the sagotras need not bathe. It is stated in the Sangraha:—"On occasions of birth or death, a samánodaka (should observe im-

purity) for three days; but he becomes purified by bathing if the deceased died before upanayana." The meaning is that if the deceased died before his upanayana was performed, the samánodakas are purified by bathing.

If the adopted son dies, both the natural and adoptive fathers should observe impurity for three nights; but the sapiṇdas of either of these for one night. If either of the fathers dies, the adopted son should observe impurity for three nights, and if a sapiṇda of either of them dies, for one night. Some are of opinion that this refers to the adopted son of two gotras. He is the adopted son of two gotras who is adopted after upanayana. So also it is laid down in a Smriti:—"He whose upanayana was celebrated in the gotra of his natural father is of two gotras." It is also laid down in another Smriti:—"He whose gotra is not known is considered to belong to the gotra of him who performs his upanayana; but if his gotra be known, he belongs to two gotras, like the adopted son."

Manu lays down the impurity attaching to married daughters when their parents die:—"If it be asked what impurity attaches to married daughters when their parents die, Bhagavan Yama says purification will be only after the lapse of three nights." If parents die, the married daughters become purified after three nights. The particle '*eva*' indicates that even if the married daughters die, the parents will become pure only after three nights.

On the subject of the death of the daughter's son and others, Vriddha Manu says:—"If the daughter's son or the sister's son dies, (before upanayana) one should observe impurity for a day and a half; if they die after upanayana, one should observe impurity for three nights; thus is the law settled. If the daughter's son or the sister's son dies after upanayana, the maternal grandfather and grandmother, or the mother's sister and brother should observe impurity for three nights. If they die before upanayana but after tonsure, the impurity lasts for a day and a half; for it is stated in the Chandriká that if sister's son, etc., die before tonsure, the maternal uncle etc become pure by bathing. Pakshini]; the meaning is that the maternal grandfather and the rest should spend a night with the day before and after in impurity. Thus also, as it is declared that the mother's sister and brother should observe impurity for a day and a half if the sister's son dies before upanayana, it should be understood that if they die before upanayana his impurity lasts only till bathing. If maternal grandfather and others die, the daughter's son and the rest should observe impurity for three days. So also Brihaspati says:—"In the case of maternal grandfather, preceptor and a Srotriya, impurity lasts for three days." Here, preceptor, means one who, though not a sapiṇda, performs the upanayana and other ceremonies; one of the following description:—

"That twice-born who, after initiating, teaches one the Vedas together with the law of sacrifice and upanishad he is known as the ácharya (preceptor)." Srotriya] one who has learnt one Sákhá (of the Vedas).

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